STATE OF MICHIGAN

COURT OF APPEALS

MARTIN M. YOUNCE and TERESA J. YOUNCE, Plaintiffs-Appellants, v JP MORGAN CHASE BANK N.A. and STERLING BANK AND TRUST F.S.B., Defendants-Appellees.	UNPUBLISHED November 24, 2015 No. 323242 Washtenaw Circuit Court LC No. 13-000190-CH

Before: METER, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

In this action involving the foreclosure of a junior mortgage and a senior mortgage, plaintiffs, Martin M. Younce and Teresa J. Younce, appeal as of right the order granting summary disposition to defendants, JP Morgan Chase Bank, N.A. (Chase), and Sterling Bank and Trust, F.S.B. (Sterling). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

This case involves a senior mortgage granted to Chase and a junior mortgage granted to Sterling. On or about January 8, 2004, plaintiffs borrowed $1,495,000 from Washington Mutual Bank (WaMu) and, as security for the loan, granted WaMu a mortgage in the property located at 7025 Dixboro in Ann Arbor (the property). WaMu recorded its mortgage.[1]

On February 10, 2006, plaintiffs executed a promissory note in favor of Sterling in the amount of $300,000. As security, plaintiffs granted Sterling two mortgages: one on the subject property and one on commercial property that is not pertinent to this appeal. Per a cross-collateral agreement, the mortgages were to be "construed together such that any default in one of the mortgages shall constitute a default in both of the mortgages . . . ." Sterling recorded the mortgage documents and cross-collateral agreement.

[1] This mortgage would later be assigned to Chase.

On or about March 20, 2007, plaintiffs defaulted on the Sterling mortgage. Thereafter, Sterling commenced foreclosure by advertisement and was the highest bidder at a subsequent sheriff's sale. Sterling obtained an equitable interest equivalent to plaintiffs' interest in the property, subject to Chase's mortgage. Sterling recorded this interest.

In May 2008, after plaintiffs failed to make one or more payments as scheduled on the WaMu (later Chase) mortgage, WaMu and plaintiffs entered into an agreement modifying the terms of the loan. The modification capitalized unpaid interest, lowered the monthly interest rate, and reduced the plaintiffs' monthly payment. The modification agreement did not mention any other mortgages or other interests in the property. In addition, the agreement contained an integration clause. Thereafter, Chase purchased the loan from WaMu.[2]

In 2010, plaintiffs defaulted on their mortgage payments to Chase. Prompted by the default, Chase sent a letter informing plaintiffs of their right to cure, as well as a letter informing plaintiffs that the loan "may be eligible for a loan modification program . . . ." On April 1, 2010, counsel for Chase sent a letter to plaintiffs informing them that the mortgage was being foreclosed on pursuant to the terms contained therein, and that a foreclosure sale was scheduled for May 6, 2010. Chase then attempted to negotiate a loan modification and/or refinancing agreement, but the negotiations ultimately proved fruitless. On February 17, 2011, Chase completed foreclosure by advertisement and purchased the property at a sheriff's sale. At the time of the foreclosure, publicly-recorded documents indicated that the property was not subject to the homestead property tax exemption.

Approximately a year after the one-year redemption period expired following Chase's foreclosure on the property, Chase initiated summary eviction proceedings against plaintiffs in district court in February 2013. Plaintiffs responded to the eviction proceedings and, on the same day, filed their complaint in the instant case in circuit court, challenging Chase's foreclosure. The complaint only listed Chase as a defendant.

Plaintiffs subsequently filed an amended complaint, listing both Chase and Sterling as defendants. The complaint alleged that the Sterling foreclosure was invalid because of a lack of notice, and that this foreclosure affected the validity of the Chase foreclosure. In addition, the complaint alleged that the Chase foreclosure was invalid for independent reasons that will be discussed below.

In response to subsequent motions for summary disposition filed by Chase and Sterling, plaintiffs alleged, for the first time, that their signatures had been forged on the Sterling mortgage. They contended that they intended to grant Sterling a mortgage on two other parcels of land, but they did not intend to grant a mortgage on the property at issue in this case. They alleged forgery and contended that Sterling's mortgage on the property was invalid. In addition, plaintiffs contended, somewhat inconsistently, that the Sterling mortgage on the property was identified during the 2008 loan modification discussions and was intended to be paid off by the mortgagor as part of the loan modification. Plaintiffs moved the trial court for leave to amend

[2] Hereinafter, we refer to this mortgage as the "Chase mortgage."

their complaint a second time to add various breach of contract claims against Chase in relation to this alleged promise to satisfy the Sterling mortgage. They also asserted claims of fraud against Sterling.

On April 16, 2014, the trial court heard argument on Chase's motion for summary disposition. The trial court also heard arguments on plaintiffs' motion for leave to amend, as well as on Sterling's motion for summary disposition, which had been scheduled for hearing at a later date. After hearing the parties' arguments, the court granted summary disposition to Chase on the ground that plaintiffs lacked standing to challenge the foreclosure. In addition, it granted summary disposition to Sterling on the ground that plaintiffs' claims against it were barred by the statute of limitations. Finally, the court denied plaintiffs' motion for leave to amend. The trial court subsequently denied plaintiffs' motion for reconsideration.

II. PLAINTIFFS' CLAIMS AGAINST STERLING ARE BARRED BY THE STATUTE OF LIMITATIONS

We review de novo a trial court's decision on a motion for summary disposition, including whether summary disposition was warranted by the expiration of the limitations period. *Tice Estate v Tice*, 288 Mich App 665, 668; 795 NW2d 604 (2010).

Plaintiffs alleged that the Sterling foreclosure, which occurred in September 2007, was invalid for two reasons: (1) the Sterling mortgage contained forged signatures; and (2) they lacked statutory notice of the foreclosure proceedings. A plaintiff must bring a claim within the time set forth in the applicable statute of limitations. In this regard, MCL 600.5801(1) provides a five-year limitations period for claims such as those brought by plaintiffs against Sterling:

> When the defendant claims title to the land in question by or through *some deed made upon the sale of the premises* by an executor, administrator, guardian, or testamentary trustee; or by a sheriff or other proper ministerial officer under the order, judgment, process, or decree of a court or legal tribunal of competent jurisdiction within this state, *or by a sheriff upon a mortgage foreclosure sale the period of limitation is 5 years*. [Emphasis added.]

"In general, the period of limitations runs from the time the claim accrues." *Adams v Adams*, 276 Mich App 704, 719; 742 NW2d 399 (2007), citing MCL 600.5827. MCL 600.5829(1) provides that a claim to recover land accrues "[w]henever any person is disseised, his right of entry on and claim to recover land accrue at the time of his disseisin[.]" "Disseisin occurs when the true owner is deprived of possession or displaced by someone exercising the powers and privileges of ownership." *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993).

Here, Sterling exercised the powers and privileges of ownership following the foreclosure sale when it recorded a deed in the name of Sterling Bank on the property. Thus, plaintiffs' claim began to accrue at the time of the foreclosure sale on September 20, 2007. The five-year limitations period expired in September 2012. Plaintiffs' 2013 complaint was filed well beyond this limitation period. Plaintiffs do not even contest as much. However, what plaintiffs do contest is whether MCL 600.5855, which tolls the limitations period in cases of fraudulent concealment, operates to toll the statute of limitations in the instant case. "Under MCL

600.5855 . . . the statute of limitation is tolled when a party conceals the fact that the plaintiff has a cause of action." *Sills v Oakland Gen Hosp*, 220 Mich App 303, 310; 559 NW2d 348 (1996). MCL 600.5855 provides:

> If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action *discovers, or should have discovered*, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations. [Emphasis added.]

This Court has held that a plaintiff "must plead in the complaint the acts or misrepresentations that comprised the fraudulent concealment." *Sills*, 220 Mich App at 310. "[T]he fraud must be manifested by an affirmative act or misrepresentation." *Doe v Roman Catholic Archbishop of the Archdiocese of Detroit*, 264 Mich App 632, 642; 692 NW2d 398 (2004), (citation and quotation marks omitted). "Mere silence [on the part of the defendant] is insufficient." *Sills*, 220 Mich App at 310. Moreover, MCL 600.5855 requires reasonable diligence on the part of the plaintiff, and if the plaintiff could have discovered that liability existed, the statute does not operate to toll the limitations period. *The Meyer & Anna Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 48; 698 NW2d 900 (2005). "If there is a known cause of action there can be no fraudulent concealment which will interfere with the operation of the statute, and in this behalf *a party will be held to know what he ought to know* . . . ." *Doe*, 264 Mich App at 643 (citation and quotation marks omitted; emphasis added). In addition, the limitations period will not be postponed if the plaintiff could have discovered the fraud from public records. *Heap v Heap*, 258 Mich 250, 263; 242 NW 252 (1932). See also *Prentis Family Foundation*, 266 Mich App at 45 n 2.

Plaintiffs cannot assert MCL 600.5855 to toll the statute of limitations in this case. Plaintiffs have not alleged any affirmative acts on the part of Sterling that would show fraudulent concealment. See *Doe*, 264 Mich App at 642 ("[T]he fraud must be manifested by an affirmative act or misrepresentation.") (citation and quotation marks omitted). In addition, the record reveals that the cross-collateral agreement, which purported to grant Sterling a mortgage on the property at issue in this case, and which contained the allegedly-forged signatures, was recorded as a matter of public record.[3] Because plaintiffs could have discovered the alleged forgery from the public record, their claim fails. See *Heap*, 258 Mich at 263; *Prentis Family Foundation*, 266 Mich App at 45 n 2. Furthermore, the record reveals that plaintiff Martin Younce testified, in his deposition, that he was aware in "2009 or '10," after visiting the register of deeds, "that Sterling Bank's name was on my house." Even assuming this visit to the register of deeds was the last day of 2010, plaintiffs' 2013 complaint was still not filed within the 2-year limit imposed by MCL 600.5855. Therefore, as the trial court correctly found, plaintiffs are unable to assert

[3] Any assertion by plaintiffs' reply brief that this document was not recorded is unfounded and ignores recorded documents contained in the lower court file.

fraudulent concealment on the part of Sterling and MCL 600.5855 should not operate to toll the limitations period. See *Doe*, 264 Mich App at 643; *Prentis Family Foundation*, 266 Mich App at 48. Accordingly, the trial court did not err when it granted summary disposition to Sterling under MCR 2.116(C)(7).[4]

III. PLAINTIFFS LACKED STANDING TO CHALLENGE THE CHASE FORECLOSURE

Next, plaintiffs challenge the trial court's conclusion that the expiration of the redemption period meant that they lacked standing to challenge the Chase foreclosure. We review the trial court's summary disposition ruling de novo. *Tice Estate*, 288 Mich App at 668. We also review de novo whether a party has standing. *UAW v Central Michigan Univ Trustees*, 295 Mich App 486, 493; 815 NW2d 132 (2012).

MCL 600.3240 establishes the statutory period during which a mortgagor can redeem property that has been foreclosed after a sheriff's sale. MCL 600.3240(7)-(12) sets forth the specific time period for redemption under different factual scenarios. In this case, neither party disputes that the statutory redemption period for the Chase foreclosure was one year from the date of the sheriff's sale, pursuant to MCL 600.3240(12). The sheriff's sale on the Chase foreclosure occurred on February 17, 2011. The one-year redemption period expired on February 17, 2012. Plaintiffs filed their complaint on February 21, 2013, well outside of the redemption period.[5]

In *Bryan v JPMorgan Chase Bank*, 304 Mich App 708, 714-715; 848 NW2d 482 (2014), this Court held that when a mortgagor fails to redeem the property within the statutory time period, he or she loses standing to challenge the foreclosure proceedings. The panel reached this conclusion by noting that MCL 600.3236 provides, in pertinent part, that:

> Unless the premises described in such deed shall be redeemed within the time limited for such redemption as hereinafter provided, such deed shall thereupon become operative, and shall vest in the grantee therein named, his heirs or assigns, all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage, or at any time thereafter . . . .

In short, "[i]f a mortgagor fails to avail him or herself of the right of redemption, all the mortgagor's rights in and to the property are extinguished." *Bryan*, 304 Mich App at 713. Upon expiration of the mortgagor's rights in the property, the mortgagor loses standing to challenge the foreclosure. *Id.*

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[4] Because the claim was outside the limitations period, this Court need not address the alternative argument, raised by Sterling for the first time on appeal, that plaintiffs lacked standing to challenge the Sterling foreclosure.

[5] Without citing anything to support their claim, plaintiffs baldly assert that they filed their complaint within the redemption period. This assertion is squarely at odds with the record in this case.

In this case, because plaintiffs failed to take any action to redeem the property during the redemption period, they lost standing to bring their claim against Chase. *Id.* Plaintiffs' rights in the property were extinguished when they failed to avail themselves of the right of redemption. *Id.* The trial court did not err when it granted summary disposition based on plaintiffs' lack of standing.

Moreover, even assuming plaintiffs had standing, they would still be unable to set aside the foreclosure sale. "The Michigan Supreme Court has held that it would require a strong case of fraud or irregularity, or some peculiar exigency, to warrant setting a foreclosure sale aside." *Sweet Air Inv, Inc v Kenney*, 275 Mich App 492, 497; 739 NW2d 656 (2007) (citations and quotation marks omitted). And, contrary to plaintiffs' contentions on appeal, they must also demonstrate that they suffered prejudice from the defects in the foreclosure proceedings. *Kim v JPMorgan Chase Bank, NA*, 493 Mich 98, 102; 825 NW2d 329 (2012). Here, plaintiffs cannot demonstrate fraud or irregularity, much less prejudice.

Plaintiffs argue that a number of instances of fraud or irregularity warrant setting aside the foreclosure sale. Plaintiffs first claim that Chase failed to comply with MCL 600.3205a-c by failing to provide notice of a loan modification and by failing to determine whether they were eligible for a loan modification, as provided in MCL 600.3205c.

Chase instituted foreclosure proceedings in February 2011. At the time, MCL 600.3205a(1)[6] provided that before proceeding with a sheriff's sale in a foreclosure by advertisement on "property claimed as a principal residence exempt from tax under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc, the foreclosing party" was required to send written notice to the borrower of certain information. That information included, among other matters: (1) reasons why the loan was in default; (2) the contact information for the mortgage holder; (3) the name of a person to contact for loan modifications; and (4) a list of housing counselors. MCL 600.3205a(1)(a)-(d). If a borrower wished to participate in the loan modification services and procedures identified in the letter, the borrower could request a meeting with a housing counselor, MCL 600.3205b(1). MCL 600.3205c contained information about the loan modification process.

As pointed out by Chase, the chief impediment to plaintiffs' argument is the requirement in MCL 600.3205a(1) stating that the loan modification process described in that section applied when the property was "claimed as a principal residence exempt from tax under Section 7cc . . . MCL 211.7cc." Here, the record reveals that plaintiffs lost their principal residence exemption when Sterling foreclosed on the property. The record also reveals that, at the time Chase checked the pertinent records before the foreclosure proceedings began, the property was not listed as exempt under MCL 211.7cc. Thus, plaintiffs were not entitled to the statutory

[6] The versions of MCL 600.3205a-c that were in effect at the time of the foreclosure sale were later replaced by similar versions of the same statutes, effective December 22, 2011. See 2011 PA 302. Those statutes were later repealed effective June 30, 2013. See 2012 PA 521. All references to MCL 600.3205a-c in this opinion will be to the versions that were in effect at the time of the foreclosure proceedings.

modification procedures they claim. Also, to the extent plaintiffs argue that the Sterling foreclosure was invalid and that the invalid foreclosure wrongfully prevented them from asserting an exemption on the property under MCL 211.7cc, we note our conclusion above that any challenge to the Sterling foreclosure was time-barred.

Furthermore, even assuming that plaintiffs were correct in their allegations about MCL 600.3205a-c, they would not be entitled to have the sheriff's sale set aside. As an initial matter, MCL 600.3205c(8) provides that the remedy for a violation of the modification process is "to convert the foreclosure proceeding to a judicial foreclosure." The statute makes no reference to setting aside the sheriff's sale. Moreover, in *Kim*, 493 Mich at 102, our Supreme Court held that when foreclosure proceedings are flawed in some manner, the resulting foreclosure is merely voidable, not, as plaintiffs would have this Court declare, void *ab initio*. In order to set aside a sheriff's sale, the Court in *Kim* explained that "plaintiffs must show that they were prejudiced by defendant's failure to comply" with the foreclosure procedures. *Id.* at 115. "To demonstrate such prejudice, they must show that they would have been in a better position to preserve their interest in the property absent defendant's noncompliance with the statute." *Id.* at 115-116. Here, even assuming plaintiffs could identify defects or irregularities with regard to the Chase foreclosure, they cannot demonstrate the requisite level of prejudice. They have not alleged—much less provided evidentiary support—that they would have qualified for a loan modification or that they would have been able to afford a loan modification, much less that they even requested a loan modification and were denied the opportunity for a modification. Plaintiffs' assertions fail, even assuming the alleged statutory violations existed. See *id.* See also *Sweet Air*, 275 Mich App at 503 (rejecting a mortgagor's claim of prejudice).

Plaintiffs raise additional claims of fraud or irregularity that warrant only minimal consideration in this space. They first allege that Chase had an obligation as part of the 2008 loan modification to pay off the Sterling mortgage. That contention is meritless, and will be discussed in detail below. Next, in passing and with no explanation, plaintiffs allege that "Chase waited 9 months from the time of foreclosure to the Sheriff's Sale in circumvention of MLCA 600.3220." MCL 600.3220 pertains to adjourning foreclosure sales, and makes no mention of a 9-month limit—or any time limit for that matter—as asserted by plaintiffs. This argument is abandoned and does not merit any further discussion. *Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003) ("An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority") (internal citations omitted). Finally, plaintiffs make a general claim of fraud or irregularity based on "the deceptive act and/or an unfair practice or otherwise violations of state laws." Plaintiffs make no effort to unravel this argument, and neither will we. See *id.*

IV. BREACH OF CONTRACT AGAINST CHASE AND MOTION FOR LEAVE TO AMEND

Next, plaintiffs allege a number of breach of contract claims against Chase, claiming that Chase was required, as part of the 2008 loan modification, to satisfy the Sterling mortgage—a junior mortgage, we note, that had already been foreclosed upon and of which plaintiffs claimed they had no knowledge. The bulk of the theories asserted in plaintiffs' brief were raised for the first time in the proposed second amended complaint. As noted, the trial court denied plaintiffs'

motion for leave to amend the complaint a second time. Given the issues and theories raised, this issue could be viewed as a challenge to the trial court's denial of plaintiffs' motion for leave to amend. "This Court will not reverse a trial court's decision regarding leave to amend unless it constituted an abuse of discretion that resulted in injustice." *PT Today, Inc v Comm'r of the Office of Fin and Ins Servs*, 270 Mich App 110, 142; 715 NW2d 398 (2006). A trial court should only deny a motion to amend for particularized reasons. *Id.* at 143. One such reason is that amendment would be futile. *Id.* "An amendment would be futile if (1) ignoring the substantive merits of the claim, it is legally insufficient on its face, (2) it merely restates allegations already made; or (3) it adds a claim over which the court lacks jurisdiction[.]" *Id.* (internal citations omitted).

Although plaintiffs assert a number of breach of contract theories against Chase, those claims can be boiled down to one simple claim: Did Chase breach any obligations to pay off the Sterling mortgage as part of the 2008 loan modification process? This claim has several flaws. As an initial matter, plaintiffs' brief on appeal fails to cite any factual support for this claim. In addition, a review of the 2008 loan modification documents reveals no mention whatsoever of Chase undertaking an obligation to pay off the Sterling mortgage. Plaintiffs do not even make an effort to argue that the four corners of the 2008 loan modification agreement contained an agreement to pay off the Sterling mortgage. Instead, their brief alleges—with no citation to the record—that it was represented to them that the loan modification was meant to pay off the Sterling mortgage.

This claim is flawed as well, because a claim based on an oral promise of that nature is barred by the statute of frauds. "The statute of frauds . . . requires certain types of agreements to be in writing before they can be enforced." *Crown Tech Park v D&N Bank, FSB*, 242 Mich App 538, 547; 619 NW2d 66 (2000). Pertinent to this case, MCL 566.132(2) provides:

> (2) An action shall not be brought against a financial institution to enforce any of the following promises or commitments of the financial institution unless the promise or commitment is in writing and signed with an authorized signature by the financial institution:
>
> (a) A promise or commitment to lend money, grant or extend credit, or make any other financial accommodation.
>
> (b) A promise or commitment to renew, extend, modify, or permit a delay in repayment or performance of a loan, extension of credit, or other financial accommodation.
>
> (c) A promise or commitment to waive a provision of a loan, extension of credit, or other financial accommodation.

This Court has held that MCL 566.132(2) acts as "an unqualified and broad ban" on certain types of claims against financial institutions. *Crown Tech Park*, 242 Mich App at 550. This ban is broad with regard to the types of promises it encompasses, as it uses "generic and encompassing terms to describe the types of promises or commitments that the statute of frauds now protects absolutely." Although the term "other financial accommodation" is not defined by statute, this

Court has, consistent with the plain language of the statute, interpreted the phrase broadly. See, e.g., *Barclae v Zarb*, 300 Mich App 455, 468; 834 NW2d 100 (2013). In *Barclae*, this Court defined financial to mean "of or pertaining to those commonly engaged in dealing with money and credit." *Id.* (citations and quotation marks omitted). Meanwhile, the term "accommodation" can be defined as "something supplied for convenience or to satisfy a need[.]" *Meriam Webster's Collegiate Dictionary* (11th ed).

MCL 566.132(2) bars any claim by plaintiffs that Chase—as assignee of WaMu's assets—promised, as part of the 2008 loan modification, to pay off the Sterling mortgage. Initially, there can be no doubt that Chase is a "financial institution" as the term is used in the statute. See MCL 566.132(3) (defining a "financial institution" as the term is used in the statute). Moreover, the type of promise at issue—a promise to satisfy plaintiffs' financial obligation to another financial institution—falls into the broad category of "other financial accommodation" as the term is used in the statute. The promise was, undoubtedly, a promise of "something supplied," i.e., funds, "to satisfy a need," i.e., another financial obligation owed by plaintiffs. Therefore, any claim based on the alleged oral promise is barred by the statute of frauds. As such, there is no merit to plaintiffs' assertion that Chase's failure to pay this obligation was an irregularity in the foreclosure proceedings (see above discussion), or that plaintiffs could have alleged any breach of contract theories against Chase as set forth in the proposed second amended complaint. The trial court did not abuse its discretion when it denied plaintiffs' motion for leave to amend to add these claims.

V. MOTION FOR RECONSIDERATION

Lastly, plaintiffs argue that the trial court erred when it denied their motion for reconsideration. We review the trial court's decision on a motion for reconsideration for an abuse of discretion. *Yoost v Caspari*, 295 Mich App 209, 219-220; 813 NW2d 783 (2012).

In general, in order to be entitled to relief, a party bringing a motion for reconsideration "must establish that the trial court made a palpable error and a different disposition would result from correction of the error." *Huntington Nat'l Bank v Daniel J Aronoff Living Trust*, 305 Mich App 496, 516; 853 NW2d 481 (2014). "But the trial court also has the discretion to give a litigant a 'second chance' even if the motion for reconsideration presents nothing new." *Yoost*, 295 Mich App at 220. Here, plaintiffs' arguments regarding reconsideration can be broken down into three categories: (1) a claim that the trial court erred by granting summary disposition to Sterling because Sterling's motion for summary disposition was scheduled for hearing at a later date; (2) a contention that the order granting summary disposition to Sterling did not comport with the trial court's oral ruling; and (3) a claim the trial court should have granted reconsideration based on the arguments presented above. We initially reject the last two claims because they are either a simple recitation of meritless issues, or, in the instance of the challenge to the trial court's order, because the plaintiffs never filed a timely challenge to the order entered by the court and because the issue is abandoned by lack of substantive discussion. See MCR 2.602(B)(3)(a) (providing the time for challenging proposed orders); *Huntington Nat'l Bank*, 305 Mich App at 516 (discussing motions for reconsideration); *Peterson Novelties, Inc*, 259 Mich App at 14.

Plaintiffs' argument concerning the logistics of the trial court's grant of summary disposition to Sterling warrants further discussion, but is nevertheless meritless. Plaintiffs are correct that, at the time of the April 16, 2014 summary disposition hearing in this case, plaintiffs had not yet filed a response to Sterling's motion for summary disposition. They are also correct that the motion was scheduled for hearing *after* the April 16, 2014 hearing on Chase's motion for summary disposition. MCR 2.116(I)(1) permits the trial court to grant summary disposition *sua sponte* "[i]f the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact . . . ." The trial cannot, however, grant summary disposition under MCR 2.116(I)(1) in contravention of a party's due process rights. *Al-Maliki v LaGrant*, 286 Mich App 483, 489; 781 NW2d 853 (2009). Here, there was no due process violation because plaintiffs were given a meaningful opportunity to be heard, as well as the opportunity for rehearing. See *id.* at 485-486 (discussing a due process claim when the trial court grants summary disposition *sua sponte*). Indeed, as the trial court recognized at the April 16, 2014 hearing, plaintiffs' counsel argued the issues raised in Sterling's motion for summary disposition at the hearing. Counsel also informed the court that the motion for leave to amend was "essentially our answer to their motion for summary disposition." In short, there is no merit to the contention that plaintiffs were deprived of a meaningful opportunity to be heard on Sterling's motion for summary disposition. See *id.* at 485-486.

Affirmed.

/s/ Patrick M. Meter
/s/ Stephen L. Borrello
/s/ Jane M. Beckering