

STATE OF MICHIGAN
COURT OF APPEALS

DEARBORN FEDERAL SAVINGS BANK,

Plaintiff-Appellant,

v

FEDERAL DEPOSIT INSURANCE
CORPORATION,

Defendant-Appellee.

UNPUBLISHED
February 19, 2013

No. 306440
Wayne Circuit Court
LC No. 10-002328-CH

Before: CAVANAGH, P.J., and SAWYER and SAAD, JJ.

PER CURIAM.

Plaintiff, Dearborn Federal Savings Bank, appeals as of right an order granting summary disposition pursuant to MCR 2.116(C)(4) for lack of subject-matter jurisdiction. We affirm.

Plaintiff and Warren Bank held mortgages on the same real property. Warren Bank subsequently foreclosed on the property and acquired it by Sheriff's Deed. Shortly thereafter, Warren Bank was closed and defendant was appointed its receiver. See MCL 487.12402. Defendant posted public notices regarding Warren Bank's closure and defendant's appointment. The notices also indicated that all creditor claims against Warren Bank had to be filed in writing by January 6, 2010, and that untimely claims would be disallowed without legal remedy. On October 22, 2009, plaintiff had filed with the Wayne County Register of Deeds a claim of interest in the real property at issue, and such claim referenced the receivership. However, plaintiff did not submit a creditor's claim to defendant until January 12, 2010, after the filing deadline. Defendant disallowed the claim on the ground that it was untimely as proscribed by the Federal Deposit Insurance Act (FDIA), specifically 12 USC 1821(d)(5)(C)(i). Thereafter, plaintiff filed this lawsuit seeking to quiet title to the property at issue and for declaratory relief.

Subsequently, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(4), arguing that the trial court lacked subject-matter jurisdiction. Defendant asserted that the FDIA, 12 USC 1811 *et seq.*, enacted a comprehensive administrative procedure for identifying and paying creditor claims filed against the assets of failed financial institutions in receivership. Defendant argued that participation in the administrative claims review process set forth in §1821(d) was mandatory and its provisions governed such claims. In this case, defendant argued, plaintiff failed to file a timely creditor's claim against Warren Bank. Pursuant to §1821(d)(5)(C)(i), untimely claims, i.e., claims filed after the date specified in the notice

published, “shall be disallowed and such disallowance shall be final.” Further, defendant noted, §1821(d)(13)(D) provides that “no court shall have jurisdiction over . . . (i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which [defendant] has been appointed receiver” Accordingly, defendant argued that the trial court lacked subject-matter jurisdiction over plaintiff’s claims. The trial court agreed, and granted defendant’s motion for summary disposition. After plaintiff’s motion for reconsideration was denied, this appeal was filed.

Plaintiff argues that the trial court erred in concluding that it did not have subject-matter jurisdiction over this action because: (1) §1819(b)(2)(D) provides state courts with jurisdiction over claims like plaintiff’s claim; (2) plaintiff had a senior, valid, and perfected security interest on the real property at issue; (3) defendant elected to proceed with this legal action instead of attempting to resolve this claim through its administrative procedures; and (4) defendant failed to provide plaintiff with the notices mandated by the FDIA. After review of plaintiff’s arguments, which were also raised in the trial court, we conclude that defendant’s motion for summary disposition for lack of subject-matter jurisdiction was properly granted.

This Court reviews de novo a trial court’s decision on a motion for summary disposition under MCR 2.116(C)(4). *Durcon Co v Detroit Edison Co*, 250 Mich App 553, 556; 655 NW2d 304 (2002). When determining if the trial court has subject-matter jurisdiction, this Court considers the pleadings, affidavits, depositions, admissions, and other documentary evidence. *Id.*

Defendant’s actions are governed by the FDIA, 12 USC 1811 *et seq.* See *Euihyung Kim v JPMorgan Chase Bank, NA*, 493 Mich 98, 107; ___ NW2d ___ (2012). And §1821(d) clearly constitutes an administrative claims review process for the filing, determination, and payment of claims against a failed financial institution when defendant, the FDIC, is appointed receiver. The powers that defendant may exercise in its capacity as receiver are numerous, but defendant must adhere to the notice requirements set forth at §1821(d)(3)(A) and (B), and must determine claims within the time period prescribed by §1821(d)(5)(A)(i). Section 1821(d)(5)(B) directs that defendant “shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.” However, §1821(d)(5)(C)(i) mandates that defendant disallow any claim filed after the end of the published filing period. In particular, §1821(d)(5)(C) provides:

(C) Disallowance of claims filed after end of filing period

(i) In general

Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (3)(B)(i) shall be disallowed and such disallowance shall be final.

(ii) Certain exceptions

Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (3)(B)(i) and such claim may be considered by the receiver if - -

(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

(II) such claim is filed in time to permit payment of such claim.

After review of the FDIA, we disagree with plaintiff's argument that the administrative claims review process set forth at §1821 is optional. It is clear that all claims against a failed financial institution in which defendant is receiver must be filed in accordance with the mandatory administrative review procedure set forth in §1821. See, e.g., *Village of Oakwood v State Bank & Trust Co*, 539 F3d 373, 385-386 (CA 6, 2008); *Damiano v FDIC*, 104 F3d 328, 333 (CA 11, 1997); *Meliezer v Resolution Trust Co*, 952 F2d 879, 882 (CA 5, 1992). That is, the administrative claims process is the exclusive method for creditors to submit claims to the FDIC, which has the authority to allow or disallow these claims in its role as receiver for the failed institution. See 12 USC 1821(d)(3)-(d)(13)(D).

However, plaintiff argues that the "state action exception" set forth in 12 USC 1819(b)(2)(D) permitted the filing of this action in the state circuit court. We disagree. First, plaintiff failed to file a timely claim with defendant against Warren Bank; thus, plaintiff's untimely claim was disallowed and the disallowance was final. See §1821(d)(5)(C)(i). Second, the "state action exception," applies to cases "in which only the interpretation of the law of such State is necessary." §1819(b)(2)(D)(iii). Thus, to the extent that plaintiff is challenging whether the administrative review procedure set forth in §1821 is mandatory and whether plaintiff received proper notice that it was required to present its claim to defendant, §1821(d)(3)(B), these issues involve the interpretation of federal, not state, law. Accordingly, the "state action exception" does not provide the state circuit court with jurisdiction over plaintiff's action. And with regard to the claim that defendant failed to provide plaintiff with the notices mandated by the FDIA, even if arguable, the state circuit court would still not have jurisdiction to adjudicate that claim. The statute specifically provides that "no court shall have jurisdiction over . . . (ii) any claim relating to any act or omission of . . . [defendant] as receiver. §1821(d)(13)(D)(ii).

Plaintiff also argues that it had a senior, valid, and perfected security interest on the disputed property; thus, its claim against Warren Bank should be recognized. However, as discussed above, all claims against a failed financial institution in which defendant is receiver must be filed in accordance with the mandatory administrative review procedure set forth in §1821. Even if plaintiff's claim had been timely filed, defendant had the statutory authority to "disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver," §1821(d)(5)(D)(i), and that decision would not be subject to judicial review, §1821(d)(5)(E).

Plaintiff also argues that defendant elected to proceed with this litigation instead of attempting to resolve this claim through its administrative procedures. This argument is without merit. As discussed above, plaintiff's claim was untimely. And defendant's affirmative defenses included that plaintiff's claims were barred by its failure to exhaust administrative remedies. Subject-matter jurisdiction is not a matter of consent and cannot be waived by a party. See *In re AMB*, 248 Mich App 144, 166-167; 640 NW2d 262 (2001) (citations omitted). Further, plaintiff's reliance on *FDIC v Lacentra Trucking, Inc*, 157 F3d 1292, 1300 (CA 11, 1998) and *Whatley v Resolution Trust Corp*, 32 F3d 905, 909 (CA 5, 1994), in support of its argument that

defendant had the “option” of proceeding with this action in the trial court is misplaced because those cases involved lawsuits filed and pending prior to the appointment of the receivers. When a lawsuit is filed before the receivership, the receiver has the option of proceeding with the litigation or may move to stay the judicial action to allow for the completion of the administrative process. See *Damiano*, 104 F3d at 333; *Whatley*, 32 F3d at 910. This case involved a post-receivership claim, not a pre-receivership lawsuit.

Next, plaintiff argues that the trial court abused its discretion by denying plaintiff’s request to amend its complaint to add a breach of contract claim related to an escrow agreement between the parties. We disagree.

This Court reviews for an abuse of discretion a trial court’s decision to grant or deny leave to amend a pleading. *In re Kostin Estate*, 278 Mich App 47, 51; 748 NW2d 583 (2008). A court has abused its discretion when its decision falls outside the range of reasonable and principled outcomes. *Id.*

Plaintiff asserts on appeal that it entered into an escrow agreement with defendant regarding the sale of the real property at issue which provided as follows:

[Plaintiff] and [defendant] each agree that, upon release and discharge of the interests claimed by each, respectively, the same interests to the degrees they exist, shall transfer respectively to the net sale proceeds to be held and maintained in an escrow, pending the final adjudication of the rights of the parties in the Lawsuit, including exhaustion of all appeal rights, or until subsequent order of the Wayne County Circuit Court.

Plaintiff argues that defendant repudiated this agreement by filing a motion for summary disposition challenging the trial court’s subject-matter jurisdiction instead of adjudicating “the rights of the parties in the Lawsuit;” therefore, plaintiff’s request to amend its complaint should have been granted. However, as the trial court noted, it did not have subject-matter jurisdiction over this claim involving an asset of the receivership that was subject to the mandatory and exclusive administrative review procedures set forth in §1821. Subject-matter jurisdiction can neither be conferred by consent nor waived by a party. See *In re AMB*, 248 Mich App at 166-167. Accordingly, amendment of plaintiff’s complaint to add a breach of contract claim would have been futile. See *PT Today, Inc v Comm’r of Office of Fin & Ins Servs*, 270 Mich App 110, 143; 715 NW2d 398 (2006). Thus, the trial court did not abuse its discretion when it denied plaintiff’s request to amend its complaint.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Henry William Saad