DA 19-0302

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 19N

SINDA PURYER,

Plaintiff and Appellant,

v.

HSBC BANK USA, NATIONAL ASSOCIATION as Trustee for the holders of Ace Securities Corp. Home Equity Loan Trust, Asset Backed Pass-Through Certificates, series 2006-CW I, The registered holders of Ace Securities Corp. Home Equity Loan Trust, Series 2006-CW1, Asset Backed Pass-Through Certificates, series 2006-CW1, HSBC MORTGAGE CORPORATION (USA), and NATIONSTAR MORTGAGE LLC,

Defendants and Appellees.

APPEAL FROM: District Court of the Eleventh Judicial District,
In and For the County of Flathead, Cause No. DV-16-897(D)
Honorable Dan Wilson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Evan F. Danno, Danno Law Firm, P.C., Kalispell, Montana

For Appellees:

Mark D. Etchart, Browning, Kaleczyc, Berry & Hoven, P.C., Helena, Montana

Submitted on Briefs: December 11, 2019

Decided: January 28, 2020

Filed:

Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Sinda Puryer (Puryer) appeals the denial of her motion for relief from judgment pursuant to M. R. Civ. P. 60 (Rule 60 motion), the denial of her Rule 15 motion for leave to file an amended complaint, and the grant of the Defendants' (collectively, Lenders) motion for summary judgment. We affirm.

¶3 On March 27, 2006, Puryer obtained a $285,750 loan (the Loan) secured by property located in Kalispell, Montana. *Puryer v. HSBC Bank USA, N.A.*, 2018 MT 124, ¶ 3, 391 Mont. 361, 419 P.3d 105 (*Puryer I*). The Loan was secured by a Deed of Trust in favor of Countrywide Home Loans, Inc. (Countrywide). On December 3, 2009, the Deed of Trust was assigned to HSBC Bank USA, N.A. (HSBC). On December 12, 2011, the Deed of Trust was assigned to Bank of America, N.A., (Bank of America or BOA), and on October 15, 2012, it was re-assigned to HSBC. *Puryer I*, ¶ 3.

¶4 During the time the Loan was assigned to Bank of America, Puryer contacted BOA about modifying her monthly mortgage payments, as she was having financial difficulties. Puryer alleges Bank of America told her to stop making her payments in order to qualify for the Home Affordable Modification Program. Puryer defaulted on November 1, 2007,

and has not made any payments on the Loan since October 1, 2007. According to *Puryer I*, she has continued to reside on the property. *Puryer I*, ¶ 4.

¶5 On December 3, 2007, Countrywide sent Plaintiff a "Notice of Default and Acceleration" (the December Notice), notifying Puryer that she was in default; that payment was required to be submitted by January 2, 2008, or thirty (30) days from the date of the notice; and that her failure to cure the default by January 2, 2008, would result in acceleration of all sums due under the note and foreclosure of the secured interest. The notice also advised Puryer of her right to cure the default after acceleration and prior to foreclosure sale, and her right to bring court action to assert the non-existence of a default or any other defense. Since Puryer's default on the loan, she received at least nine notices of foreclosure sale, none of which led to a sale. *Puryer I*, ¶ 5.

¶6 Puryer, initially appearing *pro se*, filed a complaint on October 27, 2016. She subsequently filed an amended complaint, alleging six causes of action against the Defendants, including: (1) declaratory judgment; (2) breach of contract and breach of the implied covenant of good faith and fair dealing; (3) violation of the Fair Debt Collection Practices Act (FDCPA); (4) violation of the Montana Consumer Protection Act (MCPA); (5) negligent or intentional infliction of emotional distress; and (6) lack of authority to foreclose. *Puryer I*, ¶ 7. On May 25, 2017, the District Court dismissed Puryer's complaint pursuant to the Lenders' motion to dismiss under M. R. Civ. P. 12(b)(6). Puryer appealed the dismissal to this Court in *Puryer I*. Regarding her declaratory judgment claim, Puryer argued the eight-year statute of limitations had expired on the Lenders' right to enforce Puryer's obligation, because her debt had been accelerated when she received the first

notice of sale in July of 2008, triggering the statutory period. *Puryer I*, ¶ 13. This Court held the notice of sale had not accelerated Puryer's debt because, pursuant to the Small Tract Financing Act of Montana, §§ 71-1-301 to -321, MCA, she remained able to cure the default by paying the amount past due, up until a foreclosure sale occurred. *Puryer I*, ¶¶ 15-16. Therefore, we affirmed the dismissal of her declaratory judgment claim. We also affirmed the dismissal of Puryer's emotional distress claims, but reversed the dismissal of her other claims. *Puryer I*, ¶ 40.

¶7 On remand, the case proceeded and the Lenders produced the December Notice in discovery. Puryer acknowledged her apparent receipt of the December Notice in 2007, but maintained she did not possess a copy prior to her first appeal. Puryer then filed a Rule 60 motion for relief from the order dismissing her declaratory judgment claim that the loan on her property was unenforceable because the statute of limitations had expired, which the District Court entered pursuant to our holding in *Puryer I*. Puryer also moved the District Court for leave to amend her complaint to reinstate the claim. The parties filed cross motions for summary judgment on Puryer's claims for breach of contract and breach of the covenant of good faith and fair dealing.[1] The District Court denied Puryer's motions, and granted Lenders' motion for summary judgment.

¶8 On appeal, Puryer contends discovery of the December Notice undermines this Court's decision in *Puryer I*, and that she should be relieved from the judgment and permitted to reinstate her statute of limitations defense. Regarding the grant of Lenders'

[1] In her response to Defendants' motion for summary judgment, Puryer conceded that her FDCPA and MCPA claims were barred by the statute of limitations.

motion for summary judgment, Puryer contends the District Court erred because Lenders did not send an acceleration notice as required by the Deed of Trust. Lenders argue the District Court did not err in denying Puryer's motions or in granting its motion under our holding in *Puryer I*.

¶9 Generally, this Court reviews a district court's ruling on a Rule 60 motion for an abuse of discretion. *Essex Ins. Co. v. Moose's Saloon, Inc.*, 2007 MT 202, ¶ 16, 338 Mont. 423, 166 P.3d 451 (citations omitted).[2] Likewise, we review a district court's denial of a motion to amend a complaint for abuse of discretion. *Hickey v. Baker Sch. Dist. No. 12*, 2002 MT 322, ¶ 12, 313 Mont. 162, 60 P.3d 966. A district court's decision on a motion for summary judgment is reviewed *de novo*, using the same criteria as the district court. *Beckman v. Butte-Silver Bow Cty.*, 2000 MT 112, ¶ 11, 299 Mont. 389, 1 P.3d 348.

¶10 "Under the doctrine of law of the case, a prior decision of this Court resolving a particular issue between the same parties in the same case is binding and cannot be relitigated." *State v. Gilder*, 2001 MT 121, ¶ 9, 305 Mont. 362, 28 P.3d 488 (citing *State v. Wooster*, 2001 MT 4, ¶ 12, 304 Mont. 56, 16 P.3d 409). This doctrine can preclude an appellant from raising an issue that was decided by this Court in a previous appeal. *Gilder*, ¶ 9 (citing *State v. Black*, 245 Mont. 39, 44, 798 P.2d 530, 533 (1990). The principle of the law of the case doctrine "is that an issue that has been finally decided cannot be

[2] If a movant seeks relief under 60(b)(2) based on newly discovered evidence, a district court's ruling may be reviewed for manifest abuse of discretion. In contrast, review under 60(b)(4) on the ground that the judgment is void is reviewed *de novo*. *Essex Ins. Co.*, ¶ 16.

relitigated" and therefore, it serves the purpose of judicial economy and the need for finality of judgments. *Black*, 245 Mont. at 44, 798 P.2d at 533.

¶11 Puryer argues that the law of the case—our holding in *Puryer I*—should not control here because our determination that the loan was not accelerated was based on the erroneous fact that Lenders did not send an acceleration notice, because she now has possession of the December Notice. While Puryer is correct that in *Puryer I*, this Court found "based on the plain language of the Deed of Trust . . . upon default, an implementing action—providing notice—was required to accelerate Puryer's debt," our broader conclusion was that §§ 71-1-301 to -321, MCA, applied such that the entire debt could not be fully accelerated until foreclosure sale occurred. *Puryer I*, ¶¶ 15-16. ("A Notice of Sale does not cause maturity of the entire debt owed if a borrower, at any point, may cure the default by only paying the amount due at that time, rather than being required to pay the entire loan balance."). In short, we held that Puryer's debt had not been accelerated "based on the language of § 71-1-312(1), MCA," *not* because an acceleration notice had not been sent. *Puryer I*, ¶ 16. Therefore, Puryer is incorrect that our conclusion was premised upon an erroneous fact. This Court has already decided, between these parties, the issue of whether the Loan was accelerated. Thus, the District Court did not err in concluding that the law of the case doctrine precluded the granting of Puryer's Rule 60 motion.

¶12 Likewise, the District Court did not err in denying Puryer's motion to amend her complaint, because Puryer's amendment sought to reinstate a statute of limitations defense that this Court denied in *Puryer I*, based on our conclusion that the loan had not been fully

accelerated. The law of the case doctrine bars this amendment because the issue of whether the Loan was accelerated has already been decided.

¶13 Finally, regarding Lenders' motion for summary judgment, the relevant portion of the Deed of Trust, paragraph 22, provides, "Lender shall give notice to Borrower *prior to acceleration* following Borrower's breach of any covenant or agreement in this Security Instrument . . . [.]" (Emphasis added.) As explained above, we held in *Puryer I* that the loan would not be fully accelerated until a foreclosure sale occurred. No foreclosure sale occurred here, and the Deed of Trust was not violated. The District Court did not err in granting Lenders' motion for summary judgment.

¶14 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶15 Affirmed.

/S/ JIM RICE

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ DIRK M. SANDEFUR
/S/ LAURIE McKINNON