



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Rawsonville Woods Owner LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MAHS Docket No. 17-004958

Sumpter Township,
Respondent.

Presiding Judge
Marcus L. Abood

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION UNDER
MCR 2.116(C)(10)

ORDER GRANTING RESPONDENT SUMMARY DISPOSITION UNDER MCR
2.116(I)(2)

FINAL OPINION AND JUDGMENT

INTRODUCTION

On December 3, 2018, Petitioner filed a Motion requesting that the Tribunal enter summary judgment in its favor in the above-captioned case. More specifically, Petitioner contends that Respondent could not have uncapped the taxable value ("TV") until after the one-year expiration of the redemption period unless Petitioner or its parent company transferred the property, which it did not.

On December 17, 2018, Respondent filed a response to the Motion. Respondent contends that the property was properly uncapped in 2016 because Petitioner acquired title to it in 2015 by Sheriff's Deed.

The Tribunal has reviewed the Motion, response, and the evidence submitted and finds that denying Petitioner's Motion for Summary Disposition under MCR

2.116(C)(10) and granting summary disposition in Respondent's favor under MCR 2.116 (I)(2) is warranted at this time.

PETITIONER'S CONTENTIONS

In support of its Motion, Petitioner contends that the Wayne County Sheriff transferred the property to Petitioner's parent company in April 2015 and the redemption period for the parcel ended September 12, 2015. Under MCL 211.27(7)(e), Respondent could not have uncapped the TV of the parcel until the one-year anniversary of the expiration of the redemption period unless the property was transferred, which did not occur.

RESPONDENT'S CONTENTIONS

In support of its response, Respondent contends that Petitioner's argument is essentially that under MCL 211.27a(7)(e) it is the mortgagee, but that this is incorrect. Upon the failure to redeem, the mortgagee transferred absolute title to Petitioner in April 2015 through the relation-back doctrine. This transfer occurred before the one-year anniversary of the redemption period, and thus the property was properly uncapped.

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.¹ In this case, Petitioner moves for summary disposition under MCR 2.116(C)(10). Summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion

¹ See TTR 215.

for summary disposition will be granted “when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law.”²

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party.³ The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.⁴ The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.⁵ Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving party may not rely on mere allegations or denials in pleadings but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.⁶ If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.⁷ Summary disposition under MCR 2.116(I)(2) is appropriate “[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment as a matter of law.”⁸ Thus, under this rule the court may render judgment in favor of the opposing party.

² *Lowrey v LMPS & LMPJ, Inc*, 500 Mich. 1, 5; 890 NW2d 344 (2016) (citation omitted).

³ See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

⁴ See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

⁵ *Id.*

⁶ See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

⁷ See *McCormic v Auto Club Ins Ass’n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

⁸ See also *Washburn v Michailoff*, 240 Mich App 669; 613 NW2d 405 (2000).

CONCLUSIONS OF LAW

The Tribunal has carefully considered Petitioner's Motion under MCR 2.116 (C)(10) and finds that denying the Motion and granting summary disposition in Respondent's favor under MCR 2.116(I)(2) is warranted.

The sole issue in this case is whether the subject parcel was properly "uncapped" in the 2016 tax year.⁹ If ownership of a property does not change from the previous year, the taxable value is "capped," and increases by the lesser of 5% or an inflation rate multiplier, whichever is less, and also accounts for additions and losses to the property.¹⁰ This means that although a capped property's assessed value increases, the taxable value will not increase by the same amount. When a transfer of ownership occurs, the property "uncaps," and in the next tax year, the taxable value is once again 50% of the property's true cash value.¹¹ A transfer of ownership, however, does not include a

transfer through foreclosure or forfeiture of a recorded instrument under chapter 31, 32, or 57^[12] of the revised judicature act of 1961, 1961 PA 236, MCL 600.3101 to 600.3285 and MCL 600.5701 to 600.5759, or through deed or conveyance in lieu of a foreclosure or forfeiture, until the mortgagee or land contract vendor subsequently transfers the property. If a mortgagee does not transfer the property within 1 year of the expiration of any applicable redemption period, the property shall be adjusted under subsection (3).

⁹ See Petition, November 15, 2017, ¶ 7, p 2.

¹⁰ See Const 1963, art 9, § 3.

¹¹ See Const 1963, art 9, § 3; MCL 211.27a(2).

¹² Chapter 57 of the Revised Judicature Act ("RJA"), MCL 600.5701 *et seq.*, does not apply to this case because it does not involve a person holding over the premises after "failing or refusing to pay rent due under the lease or agreement by which the person holds the premises. . . ." MCL 600.5714(a)

In this case, the Tribunal concludes that the foreclosure was by advertisement, as evidenced by an Affidavit of Posting¹³ as well as an affidavit that a judicial sale would occur on April 7, 2015.¹⁴ These notices are those required Chapter 32 of the RJA, MCL 600.3201 *et seq.*¹⁵ In a foreclosure by advertisement, the “officer or person making the sale” issues a deed to the purchaser.¹⁶ The purchaser may be the mortgagee.¹⁷ Absent redemption, the deed becomes operative and vests in the purchaser the same title as the mortgagor.¹⁸

Here, the parties do not dispute any of the operative facts. The Wayne County Sherriff reported to the Livingston County Circuit Court that the parcel at issue had been sold at public auction on April 7, 2015 to LSREF 3 Spartan (Denmark), LLC (“LSREF3”).¹⁹ On August 21, 2015, A Sheriff’s Deed was issued to LSREF3, which was recorded on September 23, 2015.²⁰ The Sheriff’s Deed issued to LSREF3 states that the redemption period was six months, which is in accord with Chapter 32.²¹ LSREF3 subsequently assigned its rights under the Sheriff’s Deed to Petitioner.²² No record evidence shows that the parcel was redeemed and “once the redemption period expires without any redemption, it is as if the purchaser had absolute legal title since the

¹³ Affidavit of Posting, February 25, 2015, attached as part of exhibit 3 to Respondent’s Answer to Motion, December 17, 2018.

¹⁴ Affidavit of Publication, April 1, 2015, attached as part of exhibit 3 to Respondent’s Answer to Motion.

¹⁵ MCL 600.3208.

¹⁶ MCL 600.3232.

¹⁷ MCL 600.3228.

¹⁸ MCL 600.3236.

¹⁹ Sheriff’s Report of Sale, April 7, 2015, attached as exhibit 2 to Respondent’s Answer to Motion.

²⁰ Sheriff’s Deed, August 21, 2015, attached as exhibit 3 to Respondent’s Answer to Motion.

²¹ Sheriff’s Deed, p 2; see also MCL 600.3240(7)-(9).

²² Assignment of Right to Receipt of an all Rights under Sheriff’s Deed, August 26, 2015, attached as exhibit 4 to Respondent’s Answer to Motion.

purchase date.”²³ In other words, by operation of law, the title to the property vested in LSREF3, and to Petitioner by assignment, as of April 7, 2015.

Petitioner argues that “Respondent could not have uncapped the subject property until after the one-year anniversary of the expiration of the redemption period unless LSREF3 transferred the property.”²⁴ MCL 211.27a(7)(e) protects a property’s taxable value from uncapping “until the *mortgagee* . . . subsequently transfers the property”²⁵ and provides a limit of one year of protection from the expiration of the redemption period. Accordingly, for Petitioner’s argument to be correct, it would need to be a mortgagee of the property. “A mortgage is [a] conveyance of an interest in real estate to secure the performance of an obligation.”²⁶ The undisputed record evidence shows that Petitioner received the interest of its parent company, which purchased the property at a foreclosure sale.²⁷ Petitioner neither cites, nor is the Tribunal aware of, any authority that a purchaser of property at a foreclosure sale becomes a mortgagee of the property. By purchasing the property Petitioner has not received an interest in the parcel that secures any other person or entity’s performance of an obligation. Instead, as described above, Petitioner acquired title to the property, retroactive to April 7, 2015, upon expiration of the redemption period. The Tribunal therefore concludes that Petitioner is not a mortgagee, and that MCL 211.27a(7)(e) does not apply to the facts of

²³ *Wells Fargo Bank v Country Place Condo Ass’n*, 304 Mich App 582, 594; 848 NW2d 425 (2014); MCL 600.3236 (explaining that the Michigan Supreme Court “has repeatedly stated that once the redemption period expires, legal title to the property becomes ‘absolute’ and relates back to the date of the purchase at the sheriff’s sale.”).

²⁴ Motion for Summary Disposition, December 3, 2018, p 3.

²⁵ MCL 211.27a(7)(e) (emphasis added).

²⁶ *In re \$55,33617 Surplus Funds*, 319 Mich App 501, 507; 902 NW2d 422 (2017) (alteration in original, citation and quotation marks omitted).

²⁷ See Sheriff’s Report of Sale; Sheriff’s Deed.

this case.²⁸ Accordingly, the Tribunal concludes that there is no dispute of material fact and that Respondent is entitled to judgment as a matter of law under MCR 2.116(I)(2).²⁹

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) is DENIED.

IT IS FURTHER ORDERED that Respondent is GRANTED summary disposition under MCR 2.116(I)(2).

IT IS FURTHER ORDERED that the case is DISMISSED.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.³⁰ Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.³¹ A copy of the motion must be served on the opposing party by mail or personal service or

²⁸ The Tribunal notes that, in this case, MCL 211.27a(7)(e) would have applied if U.S. National Bank Association, the entity granted a mortgage on the subject property, see Order Appointing Receiver, ¶ C, p 2, attached as exhibit 1 to Respondent's Answer to Motion, had purchased the property at the foreclosure sale.

²⁹ The Tribunal also concludes that if the foreclosure proceedings in this case occurred under Chapter 31 of the RJA, MCL 600.3101 *et seq.*, the result would be the same. A property's mortgagee may purchase the property at a court-ordered foreclosure sale, see, e.g., *Ledyard v Phillips*, 47 Mich 305, 308; 11 NW 170 (1882), and thus MCL 211.27a(7)(3) operates to protect those mortgagees in the same way as mortgagees who purchase a property at a foreclosure sale by advertisement.

³⁰ See TTR 261 and 257.

³¹ See TTR 217 and 267.

by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.³² Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.³³

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an “appeal by right.” If the claim is filed more than 21 days after the entry of the final decision, it is an “appeal by leave.”³⁴ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.³⁵ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.³⁶

By Marcus L. Abood

Entered: January 9, 2019
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³² See TTR 261 and 225.

³³ See TTR 261 and 257.

³⁴ See MCL 205.753 and MCR 7.204.

³⁵ See TTR 213.

³⁶ See TTR 217 and 267.