STATE OF MICHIGAN

COURT OF APPEALS

FANNIE MAE, a/k/a FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff/Counterdefendant-Appellant,	UNPUBLISHED July 29, 2014
v	No. 315459 Oakland Circuit Court
VILLA DEL LAGO CONDOMINIUM ASSOCIATION and LORI GILBERT, Defendants/Counterplaintiffs-Appellees.	LC No. 2012-128293-CH

Before: JANSEN, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

In this declaratory-judgment and slander-of-title action, plaintiff Federal National Mortgage Association ("Fannie Mae") appeals as of right the circuit court's order granting summary disposition in favor of defendants Villa Del Lago Condominium Association ("Association") and Lori Gilbert. Fannie Mae sought a declaration that its title had priority over the Association's condominium lien and argued that its title had been slandered by defendants' maintenance of the lien. We affirm in part, reverse in part, and remand.

I. FACTS

This case arises out of a sheriff's sale and the dispute over the date from which Fannie Mae has association fee liability. The homeowners entered into a mortgage agreement with Mortgage Electronic Records System, Inc. ("MERS"), recorded July 2, 2003. This mortgage was assigned from MERS to Wells Fargo and the assignment was recorded on September 28, 2009. Defendant Association recorded a condominium lien against the property on September 30, 2011. On October 11, 2011, plaintiff's predecessor, Wells Fargo, foreclosed its mortgage and purchased the property at the foreclosure sale. Through a quit claim deed, Wells Fargo subsequently transferred its interest to Fannie Mae on November 15, 2011. The redemption period expired on April 11, 2011, and the sheriff's deed vested at that time.

In June 2012, plaintiff alleges, it contacted Association representative Gilbert in order to discuss "improper fees" charged and to seek a release of the lien. Plaintiff alleges Gilbert

refused to correct the fee amount and restated that all unpaid fees needed to be paid before the Association would release the lien.

The parties do not dispute (1) that the Association lien was recorded on September 30, 2011, pursuant to MCL 559.208(1), (2) that Wells Fargo foreclosed on October 11, 2011, and (3) that Wells Fargo conveyed its interest to Fannie Mae on November 15, 2011. Defendants alleged below that Wells Fargo failed to request a written statement from the Association before the mortgage foreclosure sale in accordance with MCL 559.211(2).[1] Defendants also alleged that Fannie Mae, as the purchaser or grantee of the property, similarly failed to request a written statement from the Association before the quit claim deed was recorded. Defendants acknowledged that Fannie Mae contacted the Association representative stating that it would pay association fees due after the expiration of the redemption period on April 11, 2012, and refused to pay any dues accruing before the foreclosure sale and during the redemption period.

On July 23, 2012, Fannie Mae filed a complaint for declaratory relief and slander of title against defendants. On August 29, 2012, defendants filed an answer with affirmative defenses. Defendants also filed a counter-complaint alleging that Fannie Mae owed $10,105.18 in unpaid dues, assessment, late fees, penalties, interest, costs, and legal fees. Fannie Mae filed an answer with affirmative defenses on August 31, 2012, denying that it owed money. On December 7, 2012, Fannie Mae filed its motion for summary disposition pursuant to MCR 2.116(C)(9) and (C)(10) as to the complaint, and MCR 2.116(C)(8) and (C)(10) as to the counter-complaint. Defendants filed a timely response and requested $12,735.30 plus costs and legal fees necessary for the collection of the assessments.

Fannie Mae's motion for summary disposition was denied. Instead, the circuit court granted summary disposition in favor of defendants pursuant to MCR 2.116(I)(2). The court held that "[p]ursuant to MCL 559.211, the purchaser or grantee is liable for the money owed to the condominium when it fails to request a written statement at least five days before the sale." Furthermore, the court held that Fannie Mae's failure to obtain a written statement provided the Association a complete defense from having to amend the amount owed in the lien. The circuit court ruled that Fannie Mae was responsible for *all* unpaid association fees, both those that had accrued before the sheriff's sale and those that accrued after the sale. In particular, the court concluded that "when Wells Fargo transferred its interest to [Fannie Mae] via the [quit claim

[1] MCL 559.211(2) states: "A purchaser or grantee is entitled to a written statement from the association of co-owners setting forth the amount of unpaid assessments, interest, late charges, fines, costs, and attorney fees against the seller or grantor and the purchaser or grantee is not liable for, nor is the condominium unit conveyed or granted subject to a lien for any unpaid assessments, interest, late charges, fines, costs, and attorney fees against the seller or grantor in excess of the amount set forth in the written statement. Unless the purchaser or grantee requests a written statement from the association of co-owners as provided in this act, at least 5 days before sale, the purchaser or grantee shall be liable for any unpaid assessments against the condominium unit together with interest, costs, fines, late charge, and attorneys fees incurred in the collection thereof."

deed], Wells Fargo passed all of its interest—including the liability for unpaid assessments—to [Fannie Mae]." Since Fannie Mae was liable to the Association, there could be no slander of title. Fannie Mae filed a motion for reconsideration, which was denied.

II. STANDARD OF REVIEW

A circuit court's summary disposition ruling is reviewed de novo. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868, 872 (2008). Here, the circuit court granted summary disposition pursuant to MCR 2.116(I)(2), which provides that "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." Because the court considered materials outside the pleadings, this Court should review its decision as having been granted under MCR 2.116(C)(10). *Spiek v Dep't of Transportation*, 456 Mich 331, 338; 572 NW2d 201 (1998). Statutory interpretation is an issue of law that is reviewed de novo on appeal. *Int'l Brotherhood of Elec Workers, Local Union No 58 v McNulty*, 214 Mich App 437, 444; 543 NW2d 25 (1995).

III. ASSOCIATION FEE LIABILITY

Fannie Mae argues that the circuit court erred by granting summary disposition in favor of defendants. Specifically, Fannie Mae asserts that (1) the circuit court erroneously applied MCL 559.211, which applies to a normal sale or conveyance of full legal or marketable title by the owner, and (2) it was not liable for association fees under MCL 559.158. We agree in part.

This Court recently addressed the very issue presented in this case in *Fed Nat'l Mortgage Ass'n v Lagoons Forest Condo Ass'n*, ___ Mich App ___; ___ NW2d ___ (2014) (Docket No. 313953, decided May 15, 2014). Pursuant to MCL 559.158, this Court held that Fannie Mae, as a successor and assign of the purchaser, was liable for association fees accruing from the date of the sheriff's sale. *Id*. MCL 559.158 provides:

> If the mortgagee of a first mortgage of record or other purchaser of a condominium unit obtains title to the condominium unit as a result of foreclosure of the first mortgage, that mortgagee or purchaser and his or her successors and assigns are not liable for the assessments by the administering body chargeable to the unit *that became due prior to the acquisition of title to the unit* by that mortgagee or purchaser and his or her successors and assigns. [Emphasis added.]

In the present case, the lower court incorrectly applied MCL 559.211as the provisions of section 158 and 211 conflict. Where there are two conflicting statutory provisions, specific statutory provisions prevail over more general ones. *Ter Beek v City of Wyoming*, 495 Mich 1, 22; ___ NW2d ___ (2014). It is clear that the Legislature intended MCL 559.158 to eliminate all preexisting association assessments and corresponding fees and costs once a condominium is foreclosed upon, unless the original owner reclaims the property during the redemption period. *Lagoons Forest Condominium Ass'n*, ___ Mich App at ___ (slip op at 5). "The specific circumstance described in MCL 559.158 involving 'foreclosure' sales prevails over the general circumstance described in MCL 559.221 involving generic 'sale[s] or conveyance[s].'" *Lagoons Forest Condominium Ass'n*, ___ Mich App at ___ (slip op at 5).

The Association argued below that because Fannie Mae did not request "a written statement from the association . . . setting forth the amount of unpaid assessments, interest, late charges, fines, costs, and attorney fees" at least 5 days before sale, Fannie Mae was liable for all "unpaid assessments against the condominium unit together with interest, costs, fines, late charge, and attorneys fees incurred in the collection thereof." MCL 559.211(2). This Court disagrees. MCL 559.211(2) did not apply in this case where there was a foreclosure sale as described in MCL 559.158. *Lagoons Forest Condominium Ass'n*, ___ Mich App at ___ (slip op at 4). Indeed, this Court has already held that "even though Fannie Mae did not comply with MCL 559.211(2) by requesting a written statement from defendant before it obtained title from [the foreclosing lender], this fact does not restore the association assessments that were eliminated by the foreclosure." *Id*. at 5. Thus, even though Fannie Mae obtained title from Wells Fargo in this case without requesting a written statement from defendant, it is not liable for association assessments eliminated by the foreclosure.

The next issue is to determine the date that constitutes "acquisition of title" within the meaning of section 158. *Wells Fargo Bank*, 304 Mich App 582; ___ NW2d ___ (2014) (Docket No. 312733; decided March 18, 2014). Previously, this Court held the relevant title is acquired on the date of sheriff's sale. The purchaser at a sheriff's sale acquires equitable title. *Dunitz v Woodford Apartments, Co*, 236 Mich 45, 49-50; 209 NW 809 (1926). "And, once the right to redemption is not exercised, that equitable title automatically becomes full legal title that is effective back to the date of the sheriff's sale." *Wells Fargo Bank*, 304 Mich App at ___ (slip op at 4). Since "acquisition of title" occurs at the time of the sheriff's sale, the purchaser and his or her successors and assigns are only liable for association dues accruing after that time. *Id*. at 4. Therefore, pursuant to section 158, Fannie Mae only owed fees accruing from the date of the sheriff's sale on October 11, 2011.

III. SLANDER OF TITLE

Fannie Mae also argues the circuit court erred when it dismissed Fannie Mae's slander of title claim. We disagree.

The circuit court did not err when it dismissed Fannie Mae's slander of title claim. To prove slander of title at common law and under MCL 565.108, a claimant " 'must show falsity, malice, and special damages, i.e., that the defendant maliciously published false statements that disparaged a plaintiff's right in property, causing special damages.' " *Lagoons Forest Condominium Ass'n*, ___ Mich App at ___ (slip op at 6), quoting *B & B Investment Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998). "Malice may not be inferred simply from the filing of an invalid lien; plaintiffs must show that defendants knowingly filed an invalid lien with the intent to cause plaintiffs injury." *Sullivan v Thomas Org*, 88 Mich App 77, 86; 276 NW2d 522, 526 (1979). In this case, while Fannie Mae did owe association fees from the date of the sheriff's sale, it had no liability for fees that accrued prior to that date. Thus, the portion of the lien covering the post-foreclosure period was valid even though the other portion was not. However, while the portion of the lien that covered the fees accrued prior to the sheriff's sale was invalid, it was not recorded in bad faith. *Lagoons Forest Condominium Ass'n*, ___ Mich App at ___ (slip op at 6, 7). Consequently, Fannie Mae's slander of title claim was properly dismissed.

IV. CONCLUSION

The circuit court erred insofar as it held Fannie Mae responsible for association fees that had accrued prior to the sheriff's sale. However, the court reached the correct result to the extent that it held Fannie Mae responsible for association fees that accrued after the date of the sheriff's sale. See *Lagoons Forest Condominium Ass'n*, ___ Mich App at ___ (slip op at 5). This portion of the circuit court's ruling, finding Fannie Mae responsible for association fees accruing after the date of the sheriff's sale, was correct albeit for the wrong reason. This Court will not reverse when the lower court has reached the right result, even if it has done so for the wrong reason. *Ford Credit Canada Leasing, Ltd v DePaul*, 247 Mich App 723, 730; 637 NW2d 831 (2001). The circuit court properly dismissed Fannie Mae's slander of title claim.

We affirm in part, reverse in part, and remand for entry of judgment in favor of defendants only for those association fees that accrued after the date of the foreclosure sale. We do not retain jurisdiction. No taxable costs under MCR 7.219, neither party having prevailed in full.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Pat M. Donofrio