

STATE OF MICHIGAN
COURT OF APPEALS

CARNELL CARTER, JR.,

Plaintiff-Appellant,

v

US BANK TRUST NATIONAL ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED

April 18, 2024

No. 365301

Wayne Circuit Court

LC No. 22-000235-CH

Before: RIORDAN, P.J., and O'BRIEN and MALDONADO, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(8) (failure to state a claim on which relief can be granted) and (C)(10) (genuine dispute of material fact). We affirm.

I. BACKGROUND

This case arises from plaintiff defaulting on his mortgage. On September 30, 1999, plaintiff purchased a home (“the property”) for \$70,000. On January 31, 2006, plaintiff assigned the mortgage to Mortgage Electronic Registration Systems, Inc. (“MERS”) (the original mortgagor), as nominee for Countrywide Home Loans, Inc., as security for a loan of \$88,000. The mortgage was for a 30-year term, with a maturity date of February 1, 2036, and it was recorded on February 23, 2006. The parties dispute the date plaintiff defaulted on his mortgage, though defendant asserts he defaulted on October 1, 2008, and every month thereafter. On May 11, 2017, the mortgage was assigned by Biltmore Funding II, LLC, to defendant. On August 19, 2020, the assigned mortgage was recorded.

On December 1, 2021, defendant commenced foreclosure-by-advertisement proceedings against the property, which was published in the Detroit Legal News. Plaintiff filed a complaint on January 7, 2022, for declaratory relief regarding plaintiff's right to title of the property (Count I), to quiet title against defendant because the statute of limitations on the mortgage to foreclose had allegedly elapsed (Count II), and for a temporary restraining order (“TRO”) against defendant to stop the foreclosure sale and to ensure plaintiff was not evicted (Count III). During discovery, plaintiff denied defaulting on his mortgage on October 1, 2008. He instead alleged he applied for

relief during the 2008 housing crisis, but none was given. Plaintiff also denied that defendant was within the 15-year limitations period pursuant to MCL 600.5803 to proceed with a foreclosure sale by advertisement.

On November 23, 2022, defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10), arguing that MCL 600.5807(4) and 5807(5) did not apply to plaintiff's case and that the correct statute of limitations for mortgage foreclosure by advertisement was 15 years pursuant to MCL 600.5803. The trial court granted defendant's motion, and this appeal followed.

II. DISCUSSION

A. STANDARDS OF REVIEW

We review de novo a trial court's decision to grant or deny summary disposition. *Meemic Ins Co v Fortson*, 506 Mich 287, 296; 954 NW2d 115 (2020). "A motion under MCR 2.116(C)(8) tests the *legal sufficiency* of a claim based on the factual allegations in the complaint," and may be granted when "a claim is so clearly unenforceable that no factual development could possibly justify recovery." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160; 934 NW2d 665 (2019). "When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone." *Id.* at 160. "However, the mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action." *ETT Ambulance Serv Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395; 516 NW2d 498 (1994).

A motion for summary disposition made pursuant to MCR 2.116(C)(10) tests the *factual sufficiency* of the plaintiff's claim and is properly granted when there is no genuine issue of material fact. *El-Khalil*, 504 Mich at 160. "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might disagree." *Johnson v VanderKooi*, 502 Mich 751, 761; 918 NW2d 785 (2018) (quotation marks and citation omitted). When reviewing the trial court's decision to grant or deny summary disposition under MCR 2.116(C)(10), we must consider the parties' documentary evidence in the light most favorable to the party opposing the motion. *Johnson*, 502 Mich at 761. "[R]eview is limited to the evidence that had been presented to the circuit court at the time the motion was decided." *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 476; 776 NW2d 398 (2009).

Issues of statutory interpretation are reviewed de novo. *Wiesner v Washtenaw County Community Mental Health*, 340 Mich App 572, 580; 986 NW2d 629 (2022) (citations omitted). Applicability of equitable doctrines such as laches is also reviewed de novo. *Knight v Northpointe Bank*, 300 Mich App 109, 113; 832 NW2d 439 (2013).

B. APPLICABLE STATUTE OF LIMITATIONS

Plaintiff argues that the applicable limitations period lapsed prior to the initiation of defendant's foreclosure proceedings. We disagree.

This case requires us to assess the applicability of two statutory limitations periods.

When interpreting a statute, we follow the established rules of statutory construction, the foremost of which is to discern and give effect to the intent of the Legislature. To do so, we begin by examining the most reliable evidence of that intent, the language of the statute itself. If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted. Effect should be given to every phrase, clause, and word in the statute and, whenever possible, no word should be treated as surplusage or rendered nugatory. Only when an ambiguity exists in the language of the statute is it proper for a court to go beyond the statutory text to ascertain legislative intent. [*Vermilya v Delta College Bd of Trustees*, 325 Mich App 416, 418-419; 925 NW2d 897 (2018) (quotation marks and citation omitted).]

Defendant contends that it was bound by the 15-year limitations period laid out in MCL 600.5803 whereas plaintiff cites the 15-year limitations period laid out in MCL 600.5807(5). MCL 600.5803 provides:

No person shall bring or maintain any action or proceeding to foreclose a mortgage on real estate unless he commences the action or proceeding within 15 years after the mortgage becomes due or within 15 years after the last payment was made on the mortgage. This section limits foreclosure by advertisement and any other entries under the mortgage as well as actions of foreclosure in the courts.

In this case, defendant foreclosed the mortgage on the subject real estate by advertisement; the plain language of MCL 600.5803 clearly and unambiguously applies. MCL 600.5807(5), the limitations period cited by plaintiff, provides that “[t]he period of limitations is 10 years for an action founded on a covenant in a deed or mortgage of real estate.” Whereas the former provision applies to actions for the foreclosure of a mortgage, the plain language of this provision applies to actions based on the breach of promises made in a mortgage agreement, such as a promise to not to raise chickens on the property. To the extent there is any doubt, MCL 600.5807(5) applies to mortgages generally, whereas MCL 600.5803 specifically applies to foreclosure proceedings; when statutes conflict, case law requires that “the specific statutory provisions trump more general provisions.” *Ottgen v Katranji*, 511 Mich 223, 234; 999 NW2d 359 (2023).

The earliest date either party suggests that plaintiff defaulted was October 1, 2008,¹ and this means that defendant had until 2023 to foreclose. Defendant brought foreclosure proceedings in 2021; therefore, the trial court properly concluded that defendant-initiated foreclosure proceedings with the applicable limitations period.

¹ Plaintiff suggests that “when the last payment was made is a question of facts that has not been resolved,” but he does not suggest that the last payment was actually made at an earlier date and does not dispute that he defaulted on the loan. In general, plaintiff’s position on appeal seems to be that more than 10 but less than 15 years elapsed between the date of default and the date foreclosure proceedings began.

C. DOCTRINE OF LACHES

Finally, plaintiff reargues on appeal the doctrine of laches applies to stop defendant's foreclosure sale because despite defaulting on the mortgage, plaintiff paid \$20,000 in property taxes and maintained the home to prevent blight. We disagree.

“Laches is an equitable tool used to provide a remedy for the inconvenience resulting from [a party's] delay in asserting a legal right that was practicable to assert.” *Knight*, 300 Mich App at 115. Although important, laches is not triggered by the passage of time alone. *Id.* at 115. “For laches to apply, inexcusable delay in bringing suit must have resulted in prejudice.” *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 457; 761 NW2d 846 (2008). We need not assess whether there was an unnecessary delay in bringing foreclosure proceedings because plaintiff has failed to establish prejudice. Plaintiff asserts that he was prejudiced because he had to pay property taxes and maintain the property during the years between defaulting and defendant's foreclosure action, but plaintiff presumably would have needed to spend money on housing had he been promptly evicted. Further, this reasoning could apply to any foreclosure proceeding that is not brought immediately after the default, and this would frustrate the 15-year limitations period provided by statute. Moreover, it is a fundamental principle that “one who seeks equity must do equity.” *Bazzi v Sentinel Ins Co*, 502 Mich 390, 409; 919 NW2d 20 (2018) (quotation marks and citation omitted). “[A] complainant in equity must come to the court with a clean conscience, in good faith, and after acting with reasonable diligence” *Knight*, 300 Mich App at 114. Accordingly, it is well settled that a party asserting the doctrine of laches must do so with clean hands. *Attorney General v PowerPick Club*, 287 Mich App 13, 52; 783 NW2d 515 (2010). Plaintiff, who indisputably violated the terms of his mortgage by failing to make payments for more than 10 years, cannot be said to have clean hands and be entitled to equitable relief.

Therefore, the equitable doctrine of laches does not apply.

III. CONCLUSION

The trial court did not err in granting defendant summary disposition. We affirm the trial court's order.

/s/ Michael J. Riordan
/s/ Colleen A. O'Brien
/s/ Allie Greenleaf Maldonado