STATE OF MICHIGAN

COURT OF APPEALS

BANK OF NEW YORK MELLON TRUST COMPANY NATIONAL ASSOCIATION, f/k/a THE BANK OF NEW YORK TRUST COMPANY, N.A., Plaintiff/Counter-Defendant-Appellee,	UNPUBLISHED December 19, 2013
v	No. 311724 Macomb Circuit Court
IMELDA ROBINSON, DARNELL ROBINSON, MR. OCCUPANT, and MRS. OCCUPANT, Defendants/Counter-Plaintiffs-Appellants.	LC No. 2012-000886-CH

Before: JANSEN, P.J., and O'CONNELL and M.J. KELLY, JJ.

PER CURIAM.

In this action for possession of a foreclosed property, defendants ("the Robinsons") appeal as of right the summary disposition that the trial court granted in favor of plaintiff on the Robinsons' counterclaims. We affirm.

In 2005, the Robinsons executed a mortgage on their property in Warren, Michigan, to Mortgage Electronic Registration Systems, Inc. (MERS). The mortgage agreement provided that "[b]orrower does hereby mortgage, warrant, grant and convey to MERS (solely as nominee for lender and lender's successors and assigns) and to the successors and assigns of MERS, with the power of sale, the . . . property . . . ." The mortgage was given as security for repayment on a $76,000 note. Because of "several hardships in the family and a decrease in compensation," the Robinsons failed to make their February 1, 2009, mortgage payment or any payments thereafter. MERS assigned the Robinsons' mortgage to plaintiff in June 2009, and plaintiff began foreclosure proceedings in September 2010. The foreclosure sale was held on February 11, 2011, and plaintiff, as the successful bidder, purchased the property for $98,885.13. The Robinsons did not redeem the property from the foreclosure sale.

Accordingly, on September 2, 2011, plaintiff began eviction proceedings against the Robinsons in district court. The Robinsons filed an answer and counter-complaint, which contained several allegations, including that plaintiff did not have the right to foreclose because

there was no evidence that plaintiff was the holder of the Robinsons' note. The case was transferred to the circuit court in November 2011. Plaintiff later moved for summary disposition with regard to the Robinsons' counterclaims. Plaintiff argued that the Robinsons lacked standing to challenge the foreclosure because the statutory redemption period had expired. The Robinsons filed a brief in opposition to plaintiff's motion for summary disposition. The brief raised additional issues, including arguments that plaintiff overbid the property in violation of non-judicial foreclosure laws, and that the Robinsons had standing to challenge the foreclosure sale after the expiration of the redemption period because of alleged fraud. The trial court issued an order and opinion granting summary disposition in plaintiff's favor, which provided that

> [b]ecause [the Robinsons were] given proper notice of the sale, and because no error was made in regards [sic] to the assignment or transfer of the Mortgage or Note, no fraud, accident, or mistake has been made in regards to the foreclosure proceedings. Since the 6-month redemption period expired with no redemption of the property by [the Robinsons, the Robinsons lack] standing to bring this suit.

On appeal, the Robinsons raise two issues with regard to the underlying mortgage. First, the Robinsons argue that plaintiff, through its predecessor, committed fraud in the execution of the mortgage. Second, the Robinsons allege that plaintiff did not have the right to foreclose because there is no evidence of record that the Robinsons' note was assigned to plaintiff.

This Court reviews de novo the trial court's ruling on a motion for summary disposition under MCR 2.116(C)(5). *Kuhn v Secretary of State*, 228 Mich App 319, 333; 579 NW2d 101 (1998). "Further, whether a party has standing to bring an action is a question of law reviewed de novo." *Franklin Historic Dist Study Comm v Village of Franklin*, 241 Mich App 184, 187; 614 NW2d 703 (2000). Standing requires "a legal cause of action." *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010).

Foreclosures by advertisement are governed by MCL 600.3201 *et seq*. After a sheriff's sale is completed, any person lawfully entitled under the mortgage may redeem the foreclosed property by paying the requisite amount within the six-month redemption period. MCL 600.3240(1), (8). "In order to redeem the property from the mortgage foreclosure sale by advertisement . . . [the adverse party] must pay the bid price plus interest, and any amount for taxes and insurance that the purchaser has properly filed with the register of deeds." *Senters v Ottawa Sav Bank, FSB*, 443 Mich 45, 50; 503 NW2d 639 (1993). If the mortgagor does not redeem the property within the six-month redemption period, MCL 600.3236 provides, in pertinent part, that:

> Unless the premises described in such deed shall be redeemed within the time limited for such redemption as hereinafter provided, such deed shall thereupon become operative, and shall vest in the grantee therein named, his heirs or assigns, all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage, or at any time thereafter . . . .

In other words, where a mortgagor does not redeem the property before the expiration of the redemption period, all of the mortgagor's rights, "title, and interest" in and to the property are extinguished. MCL 600.3236. See *Piotrowski v State Land Office Bd*, 302 Mich 179, 187; 4

NW2d 514 (1942) (Where plaintiffs "did not avail themselves of their right of redemption in the foreclosure proceedings . . . all plaintiffs' rights in and to the property were extinguished."). However, Michigan Courts have recognized an equitable extension of the six-month statutory redemption period and, thereby, an extension of a mortgagor's rights to the property, where there is "a clear showing of fraud, or irregularity." *Schulthies v Barron*, 16 Mich App 246, 247-248; 167 NW2d 784 (1969); *Senters*, 443 Mich at 55 (MCL 600.3204 "specifies the requirements for redemption, leaving no room for equitable considerations" unless there is a clear showing of "fraud, accident, or mistake."). However, the mortgagor's claims of fraud, irregularity, accident, or mistake must relate to the sheriff's sale itself, not to "underlying equities, if any, bearing on the instrument . . . ." *Reid v Rylander*, 270 Mich 263, 267; 258 NW 630 (1935).

In this case, the undisputed facts establish that the Robinsons did not redeem their foreclosed property within the statutory redemption period. Thus, the law no longer provided the Robinsons with any rights, title, or interest to the property at the time their counterclaim was filed. MCL 600.3236. See *Piotrowski*, 302 Mich at 187. Accordingly, the Robinsons did not have standing to bring their claims with regard to the underlying instrument. Additionally, contrary to the Robinsons' assertions, because these claims are based upon the underlying mortgage, the Robinsons' arguments do not fit within the exception for fraud, irregularity, accident, or mistake provided by case law. Even if we were to agree that the claim related to the assignment of the mortgage fit with the exception, i.e., whether plaintiff could foreclose relates to an irregularity in the sale, the issue has no merit. The issue has been decided by *Residential Funding Co, LLC v Saurman*, 490 Mich 909; 805 NW2d 1 (2011). We are bound by that decision. *People v Beasley*, 239 Mich App 548, 559; 609 NW2d 581 (2000).

Next, the Robinsons assert that plaintiff violated non-judicial foreclosure laws because the bid plaintiff made on the Robinsons' property at the foreclosure sale bore no relationship to the property's actual market value. The Robinsons argue that the purchase violated MCL 600.3228, which requires that a purchase by a mortgagee at a foreclosure sale be made "fairly and in good faith." Because this claim alleges an irregularity or error with regard to the foreclosure sale, it could conceivably fall into the equitable exception to the redemption period under *Schulthies*, 16 Mich App at 247-248. However, we conclude that even if the claim was within the equitable exception, the claim lacks merit.

MCL 600.3228 provides that "[t]he mortgagee, his assigns, or his or their legal representatives, may, fairly and in good faith, purchase the premises so advertised, or any part thereof, at such sale." "The primary purpose of statutory interpretation is to ascertain and give effect to the intent of the Legislature." *Karpinsky v Saint John Hosp-Macomb Ctr Corp*, 238 Mich App 539, 542-543; 606 NW2d 45 (1999). "Terms that are not defined in a statute must be given their plain and ordinary meanings, and it is appropriate to consult a dictionary for definitions." *Anzaldua v Neogen Corp*, 292 Mich App 626, 632; 808 NW2d 804 (2011). "Fairly" is not defined within the statute; however, an applicable dictionary definition of "fairly" is "properly, legitimately." *Random House Webster's College Dictionary* (2001).

Although not considering MCL 600.3228, in *Pulleyblank v Cape*, 179 Mich App 690, 695; 446 NW2d 345 (1989), this Court stated that

> Pulleyblank [the mortgagee] admitted at the November 7, 1986, motion hearing that, to ensure that they obtained the property and to preclude anyone from outbidding them, they bid $251,792 for property that they now claim is worth only $103,000. As the trial court noted, this precluded other bids greater than $103,000. It also effectively precluded the mortgagors from exercising their equity of redemption. [*Id.* at 695.]

However, this Court stated that "[t]here is no question that Pulleyblank, as mortgagee, had a right to purchase the property, and collect for a deficiency, if one existed." *Id.* at 694. This Court found that the amount Pulleyblank paid for the foreclosed property was equal to the amount of the debt on the property and, thus, extinguished the mortgagor's debt on the property. *Id.* at 694-696.

Turning to the facts of this case, to redeem their property the Robinsons were required to pay $98,885.13. Even if this sum was greater than the value of the property, the amount plaintiff paid for the Robinsons' foreclosed property was equal to the amount of the debt on the property and, thus, extinguished the Robinsons' debt on the property. *Pulleyblank*, 179 Mich App at 694-696. Accordingly, the amount paid by plaintiff benefited the Robinsons by eliminating their debt on the property. Moreover, even assuming that plaintiff paid market value for the property and the Robinsons were able to redeem at market value, the Robinsons would nevertheless owe plaintiff the remaining balance of the loan. Therefore, it was not an "injustice" for plaintiff to purchase the property for an amount equal to what the Robinsons owed on the property, and plaintiff did not violate MCL 600.3228. Accordingly, the trial court properly granted summary disposition with regard to the Robinsons' counterclaims.

Affirmed.

/s/ Kathleen Jansen
/s/ Peter D. O'Connell
/s/ Michael J. Kelly