STATE OF MICHIGAN

COURT OF APPEALS

BATTH INVESTMENTS, LLC,

Plaintiff-Appellee/Cross-Appellant,

v

STAN MICIURA,

Defendant-Appellant/Cross-Appellee,

and

MICHAEL MICIURA,

Defendant-Appellant.

UNPUBLISHED
April 29, 2021

No. 352642
Wayne Circuit Court
LC No. 19-000354-CH

Before: GLEICHER, P.J., and BORRELLO and SWARTZLE, JJ.

PER CURIAM.

Defendants appeal as of right the circuit court's order granting summary disposition in favor of plaintiff. On cross-appeal, plaintiff challenges that portion of the order granting summary disposition in its favor that ordered plaintiff to reimburse defendants for property taxes they had paid related to the condominium at issue. We reverse and remand.

I. BACKGROUND

This case concerns the foreclosure of a mortgage by advertisement on a condominium located in Detroit. Angela Barney was the owner of the condominium. Barney failed to pay various condominium dues, and the condominium-assessment lien on her property was eventually foreclosed. On April 26, 2018, the condominium was sold at a sheriff's sale to defendants. At that point, Barney had a six-month redemption period, which was set to expire on October 26, 2018.

On June 4, 2018, defendants filed a summary-proceeding action against Barney to evict her from the condominium, asserting that she had failed to provide an interior inspection of the property as required under MCL 600.3237 and MCL 600.3238. On June 13, 2018, the district court entered a default judgment against Barney. On October 5, 2018, Barney moved to set aside

the default judgment against her, asserting that her redemption period did not end until October 26, 2018. That same day, Barney executed a quitclaim deed in favor of plaintiff. The quitclaim deed was recorded on October 24, 2018, two days before the date on which Barney claimed that the redemption period was to expire.

Several weeks after the quitclaim deed was recorded, the district court denied Barney's motion to set aside the default judgment. The district court stated that, upon entry of the default judgment, Barney's "redemption rights were extinguished and title to the subject property vested with" defendants, citing MCL 600.3238(10).

Plaintiff subsequently sued to quiet title in the circuit court, alleging that it was the owner of the condominium under the quitclaim deed from Barney, and that it had redeemed the property on October 24, 2018. Plaintiff further alleged that defendants had refused to record the certificate of redemption and, thus, plaintiff requested an order confirming its title to the condominium. In response to plaintiff's complaint, defendants filed two separate motions for summary disposition. Both motions argued that (1) plaintiff's complaint to quiet title was an impermissible collateral attack on the district court's default judgment against Barney; (2) under MCL 600.3238(10), the district court's entry of the default judgment extinguished Barney's right to redemption automatically and vested legal and equitable title in defendants; and (3) when Barney's redemption rights were extinguished, she no longer had an interest in the property and, therefore, had nothing to convey to plaintiff by quitclaim deed. After responsive briefs from both parties, as well as hearings on the motions, the circuit court denied defendants' motions for summary disposition.

Plaintiff subsequently filed its own motion for summary disposition, asserting that its redemption rights derived from a provision of the Condominium Act, MCL 559.101 *et seq*., MCL 559.208(2), not MCL 600.3238 or MCL 600.3240. Plaintiff claimed that, as a result, the district court's default judgment did not extinguish its redemption rights. Plaintiff argued that, although MCL 559.208(2) requires condominium liens to be foreclosed "in the same manner" as mortgage foreclosures, MCL 559.208(2) also expressly defined redemption rights separate from those contained within the mortgage foreclosure statute. Plaintiff argued that, although "basic mortgage foreclosure procedures," including the provision of notice and conducting a sale, had to be used when foreclosing a condominium lien, "substantive redemption rights of property owners [were] governed exclusively by the Condominium Act." Plaintiff, therefore, argued that when the district court entered the judgment of possession against Barney, the entry of that judgment did not impact the right of Barney or plaintiff to redeem the property under MCL 559.208(2). In response, defendants re-asserted the arguments made in their earlier motions for summary disposition.

After a hearing on plaintiff's motion, the circuit court granted summary disposition in plaintiff's favor. The circuit court also ordered plaintiff to pay defendants the property taxes that they had paid relevant to the condominium.

II. ANALYSIS

A. APPLICABILITY OF MCL 600.3201 *ET SEQ*. TO FORECLOSURE OF CONDOMINIUM LIENS

On appeal, defendants argue that the statutory provisions applicable to mortgage foreclosures by advertisement apply to the foreclosure of condominium liens and, therefore, the circuit court erred when it concluded that plaintiff redeemed the subject property within the six-month period of redemption—after the foreclosure by advertisement. Finding merit in defendants' argument, we conclude that the circuit court erred in granting summary disposition in plaintiff's favor.

This Court reviews de novo a trial court's decision whether to grant or deny a motion for summary disposition under MCR 2.116(C)(10). *Ingham Co v Mich Co Rd Comm Self-Ins Pool*, 321 Mich App 574, 579; 909 NW2d 533 (2017), remanded on other grounds by 503 Mich 917; 920 NW2d 135 (2018). Similarly, this Court reviews de novo issues of statutory interpretation. *City of Riverview v Sibley Limestone*, 270 Mich App 627, 630; 716 NW2d 615 (2006).

"Foreclosure sales by advertisement are defined and regulated by statute. Once the mortgagee elects to foreclose a mortgage by this method, the statute governs the prerequisites of the sale, notice of foreclosure and publication, mechanisms of the sale, and redemption." *Senters v Ottawa Savings Bank, FSB*, 443 Mich 45, 50; 503 NW2d 639 (1993) (citations omitted). The question before us in this case is whether MCL 600.3201 *et seq*. applies to foreclosures under the Condominium Act. We conclude that it does.

The Condominium Act states:

> (2) A foreclosure shall be in the same manner as a foreclosure under the laws relating to foreclosure of real estate mortgages by advertisement or judicial action except that to the extent the condominium documents provide, the association of co-owners is entitled to reasonable interest, expenses, costs, and attorney fees for foreclosure by advertisement or judicial action. The redemption period for a foreclosure is 6 months from the date of sale unless the property is abandoned, in which event the redemption period is 1 month from the date of sale. [MCL 559.208(2).]

Meanwhile, MCL 600.3238, which governs foreclosures of real estate mortgages by advertisement, states in relevant part:

> (1) After a foreclosure sale under this chapter and providing notice under [MCL 600.3237], the purchaser at the sale may inspect the property, including the exterior and interior of any structures on the property, as provided in this section.
>
> (2) The purchaser may conduct an initial inspection of the interior of any structures on the property. In addition to the notice provided in [MCL 600.3237], the purchaser shall provide notice to the mortgagor by certified mail, physical posting on the property, or in any manner reasonably calculated to achieve actual notice of the purchaser's intent to inspect the property at least 72 hours in advance

and shall set the time of the inspection at a reasonable time of day, in coordination with the mortgagor if possible.

* * *

(6) If an inspection under this section is unreasonably refused or if damage to the property is imminent or has occurred, the purchaser may immediately commence summary proceedings for possession of the property under [MCL 600.5701 *et seq*.] or file an action for any other relief necessary to protect the property from damage. If a purchaser commences an action for possession or any other relief under this section, the purchaser may also name as a party to the action any person who may redeem the property under [MCL 600.3240].

(7) Before commencing summary proceedings for possession of the property under this section, the purchaser shall provide notice to the mortgagor by certified mail, physical posting on the property, or in any other manner reasonably calculated to achieve actual notice, that the purchaser intends to commence summary proceedings if the damage or condition causing reasonable belief that damage is imminent is not repaired or corrected within 7 days after receipt of the notice.

* * *

(10) If a judgment for possession is entered in favor of the purchaser in an action under [MCL 600.5701 *et seq*.] as described in [MCL 600.3238(6)], the right of redemption under [MCL 600.3240] is extinguished and title to the property vests in the purchaser as provided in [MCL 600.3236] as to all persons against whom judgment was entered. [MCL 600.3238(1), (2), (6), (7), and (10).]

In *Matteson v Stonehenge Condo Ass'n*, 469 Mich 941; 670 NW2d 669 (2003), our Supreme Court indicated that MCL 559.208 of the Condominium Act is a directive to proceed under MCL 600.3201 *et seq*. In *Matteson*, this Court observed that the previous version of MCL 559.208(2) "was silent regarding a specific period of redemption and provided only that a foreclosure shall be in the same manner as a foreclosure under the laws relating to foreclosure of real estate mortgages by advertisement or judicial action." *Matteson v Stonehenge Condo Ass'n*, unpublished per curiam opinion of the Court of Appeals, issued September 10, 2002 (Docket No. 231713); slip op at 3 n 2 (cleaned up). On appeal from that decision, our Supreme Court held that the "[r]edemption period in effect at the time this dispute arose was one year from the date of sale," citing MCL 600.3240(12). *Matteson*, 469 Mich at 941. To the extent that peremptory orders of our Supreme Court can be understood, they are binding on this Court, even if consideration of other unpublished opinions of this Court is required. See *Woodring v Phoenix Ins Co*, 325 Mich App 108, 115; 923 NW2d 607 (2018). Given the Supreme Court's order in *Matteson*, we conclude that the provisions of MCL 600.3201 *et seq*., including those found in MCL 600.3238, apply to foreclosures of condominiums.

Moreover, statutes with similar "in the same manner as" language are not unique or unusual, and it is well understood that such language effectively incorporates by reference the

procedural substance of the indicated law. See, e.g., *Ludington Serv Corp v Acting Comm'r of Ins*, 444 Mich 481, 488 n 11; 511 NW2d 661 (1994); *Beason v Beason*, 435 Mich 791, 797 n 2; 460 NW2d 207 (1990); *Morris v Donovan*, 130 Mich 336, 337-338; 89 NW 963 (1902); *Runnels v Moffat*, 73 Mich 188, 195-197; 41 NW 224 (1889). Our Legislature's inclusion of "in the same manner as a foreclosure under the laws relating to foreclosure of real estate mortgages by advertisement" in MCL 559.208(2) demonstrates an unambiguous intent to incorporate the procedural requirements of MCL 600.3201 *et seq*. into foreclosures of condominium liens.

Further, MCL 600.3238 is a relatively new enactment. See 2014 PA 125. "The Legislature is presumed to be aware of all existing statutes when enacting a new statute, particularly laws on the same subject." *Hughes v Almena Twp*, 284 Mich App 50, 66; 771 NW2d 453 (2009) (citations omitted). Therefore, we presume that when it enacted MCL 600.3238 in 2014, the Legislature was aware that MCL 559.208(2) unambiguously states that foreclosure actions arising out of condominium assessment liens "shall be in the same manner as a foreclosure under the laws relating to foreclosure of real estate mortgages by advertisement or judicial action." As a result, we presume that the Legislature intended MCL 600.3201 *et seq*., and, specifically, MCL 600.3238, which provides procedures applicable to foreclosures by advertisement, to apply to condominium foreclosures such as the one at issue in this case.

Finally, plaintiff is correct that the Condominium Act has its own specific redemption period, i.e., "6 months from the date of sale unless the property is abandoned, in which event the redemption period is 1 month from the date of sale." MCL 559.208(2). This specific provision controls with respect to condominium foreclosure actions over anything to the contrary that might be found in MCL 600.3201 *et seq*. But, this specific provision is a narrow one, dealing only with the length of the redemption period.

While the length of the redemption period is related to the right of redemption, the former is not coextensive with the latter. The right of redemption is a broader concept, and it encompasses not just the period within which the redemption can take place, but also under what circumstances the right exists, how the right is enforced, and how the right is extinguished, among other things. MCL 600.3238; MCL 600.3240. Because the Condominium Act has broadly adopted the laws related to mortgage foreclosures for purposes of condominium foreclosures, with the stated exceptions of (1) the payment of certain "reasonable interest, expenses, costs, and attorney fees," and (2) the length of the redemption period, MCL 559.208(2), we conclude that the Legislature intended that MCL 600.3238 applies to condominium foreclosures to the extent consistent with these exceptions. We further conclude that the provisions of MCL 600.3238(10) involving the extinguishment of the right of redemption are fully consistent with the two exceptions in MCL 559.208(2), and therefore MCL 600.3238(10) applies here.

B. COLLATERAL ATTACK

Defendants also argue that the question whether they followed the proper procedural requirements to obtain the default judgment in the district court was not reviewable by the circuit court, and that the circuit court's decision to grant summary disposition to plaintiff constitutes an impermissible collateral attack on the district court's judgment.

"It is well established in Michigan that, assuming competent jurisdiction, a party cannot use a second proceeding to attack a tribunal's decision in a previous proceeding." *Workers' Compensation Agency Dir v MacDonald's Indus Prod, Inc (On Reconsideration)*, 305 Mich App 460, 474; 853 NW2d 467 (2014).

> "The final decree of a court of competent jurisdiction made and entered in a proceeding of which all the parties in interest have due and legal notice and from which no appeal is taken, cannot be set aside and held for naught by the decree of another court in a collateral proceeding commenced years subsequent to the date of such final decree." [*Dow v Scully*, 376 Mich 84, 88-89; 135 NW2d 360 (1965), quoting *Loesch v First Nat'l Bank of Ann Arbor*, 249 Mich 326, 330; 228 NW 717 (1930).]

Additionally, our Supreme Court has stated that once jurisdiction exists,

> mere errors or irregularities in the proceedings, however grave, although they may render the judgment erroneous and subject to be set aside in a proper proceeding for that purpose, will not render the judgment void, and until set aside it is valid and binding for all purposes and cannot be collaterally attacked. [*Jackson City Bank & Trust Co v Fredrick*, 271 Mich 538, 545; 260 NW 908 (1935).]

"The decision of a court having jurisdiction is final when not appealed and cannot be collaterally attacked." *SS Aircraft Co v Piper Aircraft Corp*, 159 Mich App 389, 393; 406 NW2d 304 (1987). That is, a party cannot challenge a judicial determination subject to appeal by filing a new action instead. *Id*. "A decision is final when all appeals have been exhausted or when the time available for an appeal has passed." *Leahy v Orion Twp*, 269 Mich App 527, 530; 711 NW2d 438 (2006).

Plaintiff's complaint to quiet title, and the circuit court's decision to grant summary disposition in plaintiff's favor in the quiet-title action, constitute an impermissible collateral attack against the district court's June 13, 2018 default judgment and November 14, 2018 order denying Barney's motion to set aside the default judgment. Given our conclusion that MCL 600.3201 *et seq*. generally, and, MCL 600.3238 specifically, apply to foreclosures of condominium liens, the district court had jurisdiction to enter the June 13, 2018 default judgment. See MCL 600.3238(6); MCL 600.5704. Any challenge to the district court's default judgment should have been in the form of a direct appeal in that case, and not by filing a new action in the circuit court. Because plaintiff's action is separate from the case in which the district court entered a default judgment, it is an improper collateral attack of that default judgment and is barred.

Further, given our conclusion that MCL 600.3201 *et seq*. applies to foreclosures of condominium liens, even if plaintiff's action did not constitute an impermissible collateral attack, we conclude that the circuit court erred in granting summary disposition to plaintiff. Under the plain language of MCL 600.3238(10), the moment the district court entered its default judgment against Barney on June 13, 2018, her redemption rights were extinguished. That is, contrary to plaintiff's assertions, there was no determination regarding the redemption rights to be made; Barney's redemption rights were automatically extinguished by operation of MCL 600.3238(10) and the district court's entry of the default judgment, and title vested in defendants. And although plaintiff claims that the language of MCL 600.3238 restricts its application to mortgage

foreclosures by advertisement, this Court is "interested not in form or color but in nature and substance." *Wilcox v Moore*, 354 Mich 499, 504; 93 NW2d 288 (1958). That is, the fact that some terminology in the provisions related to foreclosure by advertisement are not literally applicable is simply form over substance, which courts look beyond. Therefore, even if plaintiff's action was not an impermissible collateral attack, the circuit court erred in granting summary disposition in plaintiff's favor.[1]

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. Appellants, having prevailed in full, may tax costs under MCR 7.219(F).

/s/ Elizabeth L. Gleicher
/s/ Stephen L. Borrello
/s/ Brock A. Swartzle

[1] Because of our conclusion regarding this issue, plaintiff's arguments on cross-appeal regarding the issue of reimbursement of property taxes to defendants is moot and we decline to address it. See *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).