STATE OF MICHIGAN

COURT OF APPEALS

MATTHEW T. BARON, Plaintiff-Appellant, v LAKEVIEW LOAN SERVICING, LLC, FLAGSTAR BANK, FSB, and B & M ACQUISITIONS, LLC, Defendants-Appellees.	UNPUBLISHED October 25, 2018 No. 341090 Oakland Circuit Court LC No. 2017-158615-CH

Before: MURRAY, C.J., and BORRELLO and RONAYNE KRAUSE, JJ.

PER CURIAM.

In this action involving various claims of fraud, promissory estoppel, negligent administration of a loan, wrongful foreclosure, and quiet title, plaintiff appeals as of right the trial court's order granting the summary disposition motion of defendants Lakeview Loan Servicing, LLC, (Lakeview) and Flagstar Bank, FSB (Flagstar), and additionally dismissing defendant B & M Acquisitions, LLC, (B & M) with prejudice. In granting summary disposition, the trial court relied on MCR 2.116(C)(5), (8), and (10). For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

This appeal arises out of the most recent foreclosure and sheriff's sale involving plaintiff's home. On August 6, 2010, plaintiff granted a mortgage (the Mortgage) on the subject property located in Oak Park, Michigan (the Property), to non-party Mortgage Electronic Registration Systems, Inc. (MERS), as the nominee for the lender, non-party Paramount Bank. The Mortgage was recorded on August 26, 2010. On October 19, 2012, MERS assigned its interest in the Mortgage to Flagstar. This assignment was recorded on October 29, 2012. Apparently, Flagstar subsequently foreclosed on the Mortgage, and the Property was sold at a sheriff's sale held on February 4, 2014. However, the Mortgage and accompanying loan were revived pursuant to a loan modification agreement, and this sheriff's sale was set aside. The affidavit to set aside the sheriff's sale and revive the mortgage was recorded on June 15, 2015.

Under the terms of the 2015 modification agreement between plaintiff and Flagstar, plaintiff's total monthly payment was $592.24, which reflected a monthly principal and interest payment of $297.27 and a monthly escrow payment of $294.97. The agreement specifically

provided that the monthly escrow payment "may adjust periodically." Consequently, the agreement also specifically provided that the total monthly payment "may adjust periodically." Plaintiff specifically agreed in the modification agreement that "I will be in default if I do not comply with the terms of the Loan Documents, as modified by this Agreement." Furthermore, plaintiff also agreed to the following pertinent additional items in the modification agreement:

> 4. **Additional Agreements.** I agree to the following:
>
> * * *
>
> C. To comply, except to the extent that they are modified by this Agreement, with all covenants, agreements, and requirements of Loan Documents including my agreement to make all payments of taxes, insurance premiums, assessments, *Escrow Items*, impounds, and all other payments, *the amount of which may change periodically over the term of my Loan*.
>
> D. That I have been advised of the amount needed to fully fund my Escrow Account. [Emphasis added.]

Pursuant to the agreement, the modifications took effect on June 1, 2015, and plaintiff's first modified payment was due on July 1, 2015. The modification agreement was recorded on August 25, 2015.

In September 2015, according to plaintiff's allegations in his amended verified complaint, plaintiff "received a notice that there was an 'escrow shortage' of approximately $8,000." Plaintiff further alleged in his amended verified complaint that after receiving the notice of an escrow shortage, he "repeatedly made calls to Flagstar to find out what the notice was regarding, how the figure was calculated, how it was to be paid, etc.," but that "no one could tell Plaintiff what the notice was regarding or how it needed to be paid." Additionally, plaintiff alleged that after receiving the escrow shortage notice, he "continued to make monthly payments to Flagstar" and "only received sporadic monthly statements from Flagstar." According to plaintiff's allegations, "despite his continued monthly payments, the statements that Plaintiff did receive did not show that they were being registered by Flagstar."

On October 1, 2015, according to the affidavit of Flagstar loan administration analyst Vanessa Ellison, an annual escrow disclosure statement was mailed via first class United States mail to plaintiff at his home on the Property. The escrow disclosure statement showed that plaintiff's new monthly payment would be $857.76 and that this new payment amount would take effect on November 1, 2015. The statement also set forth the monthly escrow disbursements and projected monthly escrow balances for the coming year, indicated that there was a projected escrow shortage of $2,134.68, and indicated how plaintiff's new monthly payment was calculated.

On February 18, 2016, Flagstar assigned the Mortgage to Lakeview. The assignment was recorded on February 26, 2016.

In a letter dated February 23, 2016, addressed to plaintiff from Flagstar, plaintiff was informed that his loan was past due, and Flagstar offered plaintiff the opportunity to schedule a face-to-face interview to discuss his financial circumstances and options to make his loan current. Ellison averred that this letter was mailed to plaintiff at the Property via first class United States mail.

In a letter dated February 25, 2016, addressed to plaintiff from Flagstar, plaintiff was informed that his "failure to make timely payments on the mortgage note ha[d] caused a default" in the Mortgage. The letter further indicated that plaintiff could cure the default by submitting all payments due since January 1, 2016, which amounted to $1,818.02. The letter also stated:

> This default must be cured by paying the above amount. You have thirty (30) days from the date this letter is mailed to make your overdue payment. If you fail to cure this default, your indebtedness may be accelerated, the entire amount due and payable immediately, and it may result in the sale of the property.

Ellison averred that this letter was mailed to plaintiff at the Property via first class United States mail.

On August 6, 2016, notice that the Mortgage on the subject property was in default and would be foreclosed by sale was posted in a conspicuous place and attached in a secure manner to the Property. Additionally, notice that the Mortgage on the Property was in default and would be foreclosed by sale was published in the Oakland County Legal News on August 4, 11, 18, and 25, 2016.

On October 11, 2016, the Property was sold to Lakeview at a sheriff's sale after Lakeview had foreclosed on the Mortgage. The sheriff's deed was recorded on October 25, 2016. Ellison averred that Flagstar was the servicing agent for the Mortgage from 2012 through October 11, 2016, when the sheriff's sale was held.

According to Ellison's affidavit, a mortgage statement was mailed to plaintiff on October 17, 2016, via first class United States mail. This statement indicated that plaintiff failed to make 10 monthly payments of $857.56, that he was 290 days delinquent on his loan as of October 17, 2016, that he owed $12,272.07, and that he had to pay $12,272.07 to make his loan current.

The last day to redeem the property was April 12, 2017. Apparently, plaintiff did not attempt to redeem the property as there is no evidence in the record of plaintiff taking such action.

On April 14, 2017, Lakeview sold the Property to B & M, which initiated proceedings against plaintiff for possession of the property. According to plaintiff's brief in response to the summary disposition motion, the parties agreed to stay those proceedings pending the resolution of the instant case.

On May 5, 2017, plaintiff filed the instant lawsuit against defendants Lakeview and Flagstar, alleging fraudulent misrepresentation/silent fraud (Count I), constructive fraud (Count II), promissory estoppel (Count III), negligent administration of loan (Count IV), and wrongful

foreclosure under MCL 600.3208 (Count V). On May 24, plaintiff filed an amended verified complaint adding B & M as a defendant and adding a claim to quiet title (Count VI).

In lieu of an answer, defendants Lakeview and Flagstar filed a motion for summary disposition under MCR 2.116(C)(8) and (C)(10), arguing essentially (1) that plaintiff lacked standing to bring claims related to the Property because plaintiff's legal interest in the Property was extinguished through properly conducted foreclosure proceedings and the redemption period had expired and (2) that none of plaintiff's claims had legal merit. The parties stipulated that if the trial court granted the summary disposition motion filed by Lakeview and Flagstar, then B & M would also be dismissed with prejudice.

The trial court granted Lakeview and Flagstar's motion for summary disposition and dismissed B & M with prejudice pursuant to the stipulated order previously entered. This appeal ensued.

II. STANDARD OF REVIEW

As will be discussed below, the issue of plaintiff's standing to bring his claims is dispositive in resolving the instant appeal.

A trial court's decision to grant or deny summary disposition is reviewed de novo to determine, based on the entire record, whether the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). This Court also reviews de novo, as a question of law, whether a party has standing to bring an action. *Franklin Historic Dist Study Comm v Village of Franklin*, 241 Mich App 184, 187; 614 NW2d 703 (2000).

In determining the proper subrule of MCR 2.116 under which to analyze the propriety of the trial court's summary disposition ruling, we first note that (C)(8) is inapplicable in this instance because it is necessary to consider evidence beyond the pleadings to resolve the issue on appeal. *Maiden*, 461 Mich at 119-120.

However, when it is necessary to consider material outside the pleadings, it is unclear whether subrule (C)(5) or (C)(10) provides the proper ground under which to consider summary disposition for a lack of standing. Under MCR 2.116(C)(10), summary disposition is proper if "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." Summary disposition is proper under MCR 2.116(C)(5) if "[t]he party asserting the claim lacks the legal capacity to sue." This Court has stated that "standing to sue and capacity to sue are two distinct concepts" that should not be improperly conflated. *Flint Cold Storage v Dep't of Treasury*, 285 Mich App 483, 502; 776 NW2d 387 (2009). This conclusion was supported by a citation to *Mich Chiropractic Council v Comm'r of Fin & Ins. Servs Office*, 475 Mich 363, 374 n 25; 716 NW2d 561 (2006) (opinion by YOUNG, J.), overruled on other grounds by *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 352, 371 & n 18; 792 NW2d 686 (2010). In *Mich Chiropractic Council*, Justice YOUNG wrote that "some recent Court of Appeals cases have erroneously equated standing with capacity to sue for the purposes of dispositive motions under MCR 2.116(C)(5)" but that "the two concepts are unrelated," and "[o]ur courts are admonished

to avoid conflating the two." *Mich Chiropractic Council*, 475 Mich at 374 n 25 (opinion by YOUNG, J.). Nonetheless, this Court has also more recently applied subrule (C)(5) to the issue of standing. See *UAW*, 295 Mich App at 493-497. Our Supreme Court has done the same. See *Miller v Chapman Contracting*, 477 Mich 102, 104; 730 NW2d 462 (2007) (affirming the trial court's decision "granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(5) based on lack of standing").

The word "capacity" is a legal term of art meaning "[t]he power to create or enter into a legal relation under the same circumstances in which a normal person would have the power to create or enter into such a relation," and more specifically, "the satisfaction of a legal qualification, such as legal age or soundness of mind, that determines one's ability to sue or be sued, to enter into a binding contract, and the like." *Black's Law Dictionary* (10th ed). This meaning is reflected in MCR 2.201(C), which involves capacity to sue and provides, among other things, that natural persons, various corporate entities, and various governmental units may sue or be sued in their own names. Additionally, the rules providing for representation on behalf of minors and incompetent persons in MCR 2.201(E) reflect the understanding that a minor or incompetent person generally does not have the legal capacity to sue or be sued on his or her own. Cf., e.g., *Russell v Detroit*, 321 Mich App 628, 643; 909 NW2d 507 (2017) ("[M]inors generally lack capacity to sue in their own name.").

In contrast, "[t]he purpose of the standing doctrine is to assess whether a litigant's interest in the issue is sufficient to ensure sincere and vigorous advocacy." *Lansing Sch Ed Ass'n*, 487 Mich at 355 (quotation marks and citation omitted). "[T]he standing inquiry focuses on whether a litigant is a proper party to request adjudication of a particular issue and not whether the issue itself is justiciable." *Id*. (quotation marks and citation omitted).

Therefore, it seems that MCR 2.116(C)(5) is actually concerned only with the question whether a person or entity legally possesses the inherent ability to initiate a lawsuit in the general sense and not the question with which standing is concerned, which is whether that person or entity, assuming the possession of the legal ability to sue, has the requisite interest in the lawsuit to be allowed to maintain the lawsuit. Accordingly, it seems that (C)(5) is not the proper subrule under which to consider the issue of standing. Cf. also *Leite v Dow Chem Co*, 439 Mich 920; 478 NW2d 892 (1992) ("[T]he real-party-in-interest is not the same as the legal-capacity-to-sue defense. Compare MCR 2.201(B), which concerns the requirement that an action be prosecuted by the real party in interest, with MCR 2.201(C), which concerns capacity to sue or be sued. . . . These defendants . . . defend on the basis that the plaintiffs are not and never were persons who possessed a cause of action against them. A motion based on such a [real-party-in-interest] defense would be within MCR 2.116(C)(8) or MCR 2.116(C)(10), depending on the pleadings or other circumstances of the particular case.").[1] In light of this conclusion, we will consider the

[1] An order of our Supreme Court constitutes binding precedent "if it constitutes a final disposition of an application and contains a concise statement of the applicable facts and reasons for the decision." *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 371; 817 NW2d 504 (2012).

matter under subrule (C)(10), although we additionally note that our conclusion with respect to whether summary disposition was properly granted would be the same under either subrule.[2]

Our Supreme Court has set forth the applicable standard of review for summary disposition motions under (C)(10) as follows:

> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Maiden*, 461 Mich at 120.]

III. ANALYSIS

Moving to the substance of plaintiff's appellate argument, a litigant has standing if a legal cause of action exists; or if the litigant meets the requirements in MCR 2.605 for seeking a declaratory judgment; or, in circumstances where a cause of action is not provided at law, if a court determines in its discretion that the litigant "has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or [that] the statutory scheme implies that the Legislature intended to confer standing on the litigant." *Lansing Sch Ed Ass'n*, 487 Mich at 372.

"Foreclosure sales by advertisement are defined and regulated by statute." *Senters v Ottawa Savings Bank, FSB*, 443 Mich 45, 50; 503 NW2d 639 (1993); see also MCL 600.3201 ("Every mortgage of real estate, which contains a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and in the manner specified in this chapter. . . ."). Under MCL 600.3240(1), a sheriff's deed obtained through purchase of the property at a sheriff's sale becomes void if the entire premises is redeemed by paying the required amount within the applicable statutory redemption period as provided in MCL 600.3240(7) to (12). See also *Bryan v JPMorgan Chase Bank*, 304 Mich App 708, 713; 848 NW2d 482 (2014), citing MCL 600.3240. However, "[u]nless 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 . . . ." MCL 600.3236. Accordingly, "[i]f a mortgagor fails to avail him or herself of the right of redemption, all the mortgagor's rights in and to the property are extinguished." *Bryan*, 304 Mich App at 713. As a result, a mortgagor who fails to redeem the property within the applicable redemption period does not have standing to commence an action related to the property or the foreclosure, absent a clear showing of fraud or irregularity. *Id*. at 713-715.

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[2] Under both (C)(5) and (C)(10), a reviewing court considers the pleadings and other evidence submitted by the parties. *Maiden*, 461 Mich at 120; *UAW*, 295 Mich App at 493.

The alleged fraud or irregularity must actually pertain to the foreclosure process itself in order to justify setting aside a sheriff's sale of the property. See *Conlin v Mtg Electronic Registration Sys, Inc*, 714 F3d 355, 359-360 (CA 6, 2013)[3] (analyzing foreclosure-by-advertisement procedures under Michigan law and stating with respect to the showing necessary to permit a court to consider setting aside a foreclosure sale: "It is further clear that not just any type of fraud will suffice. Rather, [t]he misconduct must relate to the foreclosure procedure itself.") (Quotation marks and citation omitted). Our Supreme Court has explained that after a statutory foreclosure sale, the mortgagor may seek to have the sale set aside by commencing judicial proceedings or, in what amounts to an equivalent approach, hold over after the expiration of the redemption period and test the sale's validity in summary proceedings. *Reid v Rylander*, 270 Mich 263, 267; 258 NW 630 (1935). However, our Supreme Court held in *Reid* that the "validity of the sale may be tested in a summary proceeding based thereon, in so far as invalidity thereof appears in the procedure, but underlying equities, if any, bearing on the instrument, legal capacity of the mortgagee or trustee, and other matters, wholly *de hors* the record, inclusive of an accounting to determine the amount due, cannot be made triable issues in a summary proceeding." *Id*. Similarly, in *Detroit Trust Co v Agozzinio*, 280 Mich 402, 405-406; 273 NW 747 (1937), our Supreme Court held that when property is sold at a statutory foreclosure sale "and offered to the highest bidder, and the sale is without fraud, and is fairly conducted, after proper notice, and is struck off to a third person, it will require a strong case, and some peculiar exigency, to warrant a court in setting it aside." (Citation and quotation marks omitted.) Simply put, "[s]tatutory foreclosures should not be set aside without some very good reasons therefor," *Markoff v Tournier*, 229 Mich 571, 575; 201 NW 888 (1925), and a mortgagor who failed to redeem the property within the statutory redemption period lacks standing to subsequently initiate an action related to the property or the foreclosure unless the mortgagor can clearly show fraud or irregularity in the foreclosure process itself because the mortgagor no longer has any right in or to the property at issue.

In this case, it is undisputed that the redemption period expired on April 12, 2017, six months after the sheriff's sale was conducted. MCL 600.3240(8) provides for a six-month redemption period for a mortgage of residential property when certain conditions are met, which are not at issue in this case. There is also no evidence in this case that plaintiff took any steps to redeem the Property during the statutory redemption period. Instead, plaintiff filed the instant lawsuit on May 4, 2017, well after the statutory redemption period had expired.

Plaintiff's primary claim relating to any alleged irregularity in the foreclosure process itself is his claim that he did not receive notice of the sheriff's sale as required by MCL 600.3208.[4] However, Lakeview and Flagstar submitted affidavits indicating that notice of the

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[3] "Decisions from lower federal courts are not binding but may be considered persuasive." *Truel v City of Dearborn*, 291 Mich App 125, 136 n 3; 804 NW2d 744 (2010).

[4] MCL 600.3208 provides as follows:

> Notice that the mortgage will be foreclosed by a sale of the mortgaged premises, or some part of them, shall be given by publishing the same for 4 successive weeks at least once in each week, in a newspaper published in the

sheriff's sale was published for four consecutive weeks as well as posted in a conspicuous place on the Property. Lakeview and Flagstar also submitted a picture of the location where the notice was posted, as well as copies of the notice itself. Accordingly, there was evidence that the requirements of MCL 600.3208 were satisfied. In his response to the summary disposition motion, plaintiff did not submit any evidence rebutting this evidence that notice was given.

Once defendants Lakeview and Flagstar submitted this evidence showing that notice was given, plaintiff could not merely rest on his allegation that he did not receive notice in order to establish a question of fact. MCR 2.116(G)(4); *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 7-8; 890 NW2d 344 (2016). In this case, plaintiff failed to submit any evidence to support his bare assertion that he did not receive notice and thus failed to establish a genuine question of fact. MCR 2.116(G)(4); *Lowrey*, 500 Mich at 7-8.[5]

Plaintiff simply argues on appeal that he established a genuine issue of material fact with respect to notice through his assertion in his affidavit that he "did not receive notice regarding the [sheriff's] sale." Based on the trial court's written opinion, it does not appear that the trial court considered this affidavit. However, the trial court's scheduling order stated that plaintiff's response was due on September 22, 2017, and plaintiff did not submit his affidavit until more than one month later on October 25, 2017. Although plaintiff timely filed his response brief on September 22, 2017, he did not attach his affidavit to his response. Moreover, plaintiff's affidavit indicates that it was subscribed and sworn on October 24, 2017. MCR 2.116(G)(1) provides for the filing of a brief in support of a summary disposition motion (and any affidavits), the filing of a response (including a brief and any affidavits), and a reply brief. Subrule (G)(1) further provides that the trial court may set the schedule for when these filings must be made. Additionally, MCR 2.116(G)(1)(a)(iv) states that "no additional or supplemental briefs may be filed without leave of the court." In this case, there is no dispute that plaintiff's affidavit was an

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> county where the premises included in the mortgage and intended to be sold, or some part of them, are situated. If no newspaper is published in the county, the notice shall be published in a newspaper published in an adjacent county. In every case within 15 days after the first publication of the notice, a true copy shall be posted in a conspicuous place upon any part of the premises described in the notice.

[5] Furthermore, to the extent that plaintiff argues that his lack of notice of the sheriff's sale prevented him from knowing about Lakeview's interest, the undisputed evidence shows that the notice of the sheriff's sale indicated Lakeview's interest in the Mortgage and that Flagstar remained the servicing agent for the Mortgage through the time of the sheriff's sale. Additionally, Flagstar's February 18, 2016 assignment of the Mortgage to Lakeview was recorded on February 26, 2016, and plaintiff therefore also had constructive notice of Lakeview's interest. "Constructive notice is notice that is imputed to a person concerning all matters properly of record." *Penrose v McCullough*, 308 Mich App 145, 153; 862 NW2d 674 (2014) (quotation marks and citation omitted) (concluding that a purchaser of land had constructive notice of a preexisting easement that was recorded before the purchase was made).

untimely filed attempt to supplement his response to the summary disposition motion. Plaintiff did not seek leave of the trial court to file this supplement. Nor has plaintiff cited any authority on appeal, or provided any explanation, to support his contention that the affidavit should have been considered. Therefore, plaintiff has not demonstrated that the trial court erred by declining to consider plaintiff's untimely filed affidavit. MCR 2.116(G)(1).

Moreover, even if plaintiff's affidavit had been considered, it would not have created a genuine issue of material fact with respect to notice because it merely included a conclusory assertion that notice was not received. Plaintiff did not include any additional factual statements to provide any support for this bare assertion. Conclusory allegations in an affidavit that are devoid of sufficient detail are insufficient to create an issue of fact to survive summary disposition under MCR 2.116(C)(10). *Quinto v Cross & Peters Co*, 451 Mich 358, 370-372; 547 NW2d 314 (1996). Consequently, there is no evidence in the record from which this Court could conclude that a genuine issue of material fact exists regarding whether notice of the sheriff's sale was given. The unrebutted record evidence establishes that notice of the sheriff's sale was published and posted in a conspicuous place on the Property.

Next, plaintiff argues that there was a question whether the Mortgage was in default such that a foreclosure by advertisement was prohibited under MCL 600.3204(1)(a). That statute provides that a party may foreclose a mortgage by advertisement if, among other requirements, "[a] default in a condition of the mortgage has occurred, by which the power to sell became operative." MCL 600.3204(1)(a). However, there is no evidence in the record to support plaintiff's claim that he was not in default on the mortgage, and the undisputed evidence shows that plaintiff had missed multiple payments and was informed that he was in default on his mortgage. Plaintiff did not present any evidence that these missed payments were actually made. As previously stated, plaintiff could not rely solely on his allegations to create a genuine issue of fact. MCR 2.116(G)(4); *Lowrey*, 500 Mich at 7-8. In actuality, plaintiff's arguments really amount to a dispute about how he understood his obligations under the mortgage and the loan modification agreement. But such arguments bearing on the underlying instrument and outside the foreclosure process itself are not properly addressed in proceedings following the expiration of the redemption period when the foreclosed property has not been redeemed. *Reid*, 270 Mich at 267.

Because the redemption period expired without plaintiff having redeemed the property and before plaintiff filed the instant lawsuit, all of plaintiff's rights in the property had been extinguished before this lawsuit was filed, and plaintiff no longer had standing to bring his claims unless he could make a clear showing of fraud or irregularity in the sheriff's sale itself. *Reid*, 270 Mich at 267; *Bryan*, 304 Mich App at 713-715. There is no evidence from which this Court could conclude that such fraud or irregularity in the sale occurred. Therefore, Lakeview and Flagstar's summary disposition motion should have properly been granted pursuant to MCR 2.116(C)(10) on the ground that plaintiff lacked standing to bring his claims. Although the trial court properly determined that plaintiff lacked standing, it determined that summary disposition was appropriate. In sum, the trial court did not err by granting the summary disposition motion and dismissing plaintiff's cause of action.

Affirmed. Defendants, having prevailed, may tax costs. MCR 7.219(A).

/s/ Christopher M. Murray
/s/ Stephen L. Borrello
/s/ Amy Ronayne Krause