

STATE OF MICHIGAN
COURT OF APPEALS

BIORESOURCE, INC.,

Plaintiff-Appellee,

and

OPPMAC, INC.,

Intervening Plaintiff-Appellant,

v

CITY OF DETROIT, JOE VASSALLO, PAUL
BERNARD, FREDERICK ROTTACH,
CENTRAL MAINTENANCE SERVICES, INC.,
SAM FODALE, JERRY FODALE,

Defendants-Appellees,

and

STATE OF MICHIGAN and DIAMOND
DISMANTLING, INC.,

Defendants.

UNPUBLISHED

September 28, 2004

No. 241137

Wayne Circuit Court

LC No. 01-123531-CH

ON RECONSIDERATION

BIORESOURCE, INC.,

Plaintiff-Appellant,

and

OPPMAC, INC.,

Intervening Plaintiff-Appellee,

v

CITY OF DETROIT, JOE VASSALLO, PAUL
BERNARD, FREDERICK ROTTACH, SAM

No. 241168

Wayne Circuit Court

LC No. 01-123531-CH

FODALE, JERRY FODALE, and STATE OF
MICHIGAN,

Defendants-Appellees,

ON RECONSIDERATION

and

CENTRAL MAINTENANCE SERVICES, INC.
and DIAMOND DISMANTLING, INC.,

Defendants.

Before: Borrello, P.J., and White and Smolenski, JJ.

PER CURIAM.

Plaintiff Bioresource, Inc., filed this action to quiet title to property in the city of Detroit for which it failed to pay property taxes for many years. Plaintiff claimed that, although the city had acquired the property years earlier in foreclosure proceedings, plaintiff was still the fee owner of the property because notice of the foreclosure proceedings was not provided to a previous mortgagee. Oppmac, Inc. (hereinafter "Oppmac"), subsequently intervened as a successor to the original mortgagee. Oppmac argued that it had previously redeemed the property and, consequently, plaintiff's former interest in the property was restored. The trial court granted the city's motion for summary disposition, concluding that plaintiff no longer held an interest in the property. Plaintiff appeals as of right in Docket No. 241168, and Oppmac appeals as of right in Docket No. 241137. The appeals were consolidated for this Court's consideration. We previously affirmed the trial court's grant of summary disposition in an unpublished per curiam opinion on May 27, 2004. Subsequently, we granted plaintiff's and Oppmac's motion for reconsideration. Upon reconsideration, we reverse and remand in both Docket Nos. 241137 and 241168.

I. Docket No. 241168

In its first four issues, plaintiff argues that the city never properly acquired title to the subject property because of numerous defects in the 1993 and 1997 foreclosure proceedings and also because the city's actions were not timely under the applicable limitation period. Appellate review is usually limited to issues actually decided by the trial court. *Candelaria v B C Gen Contractors, Inc*, 236 Mich App 67, 83; 600 NW2d 348 (1999). We may consider an issue not decided by the lower court if it involves a question of law and the facts necessary for its resolution have been presented. *Michigan Twp Participating Plan v Fed Ins Co*, 233 Mich App 422, 435-436; 592 NW2d 760 (1999). However, plaintiff's first four issues on appeal do not involve only legal questions. In addition, the factual record has not been sufficiently developed to permit resolution of the issues.

Furthermore, we find that these issues are not properly before this Court because the purported defects were not alleged in plaintiff's complaint, nor otherwise raised in, or presented to, the trial court. Issues not raised in the pleadings, nor argued to the trial court, need not be

addressed on appeal. *Higgins Lake Property Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 117; 662 NW2d 387 (2003). See also *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993) (“Issues raised for the first time on appeal are not ordinarily subject to review.”). Because plaintiff did not preserve these issues by properly raising them below, the trial court did not address them. We therefore decline to consider them on appeal. *Herald Co, Inc v Ann Arbor Public Schools*, 224 Mich App 266, 278; 568 NW2d 411 (1997).

Plaintiff next argues that the city failed to provide proper notice of the foreclosure proceedings on the property to Oppmac and that the city could not foreclose on the property and obtain valid title to the property unless it served proper notice on all persons claiming an interest in the property. Regardless of whether the trial court relied on the Detroit City Charter, § 8-403, or MCL 211.131e(5), the failure to provide notice to the mortgagee did not affect plaintiff’s rights, and therefore did not restore plaintiff’s interest in the property. Nothing in § 8-403 of the city’s charter suggests that the city was required to provide simultaneous notice to all parties possessing an interest in the property. Furthermore, our Supreme Court has specifically held that MCL 211.131e does not require simultaneous notice. *Detroit v Adamo*, 466 Mich 890; 647 NW2d 479 (2002). Because § 8-403 does not conflict with MCL 211.131e(5), the trial court did not err in applying MCL 211.131e(5). Provisions of the General Property Tax Act, MCL 211.1 *et seq.*, are applicable to cities and villages unless a municipality adopts its own charter provision or ordinance that conflicts with the act. MCL 211.107(1). Therefore, the trial court correctly concluded that any notice defects did not affect plaintiff’s rights whether its decision was based on MCL 211.131e(5) or the Detroit City Charter.

This Court’s decision in *Frey v Scott*, 224 Mich App 304; 568 NW2d 162 (1997), further supports the trial court’s determination that plaintiff may not assert an interest in the property based on defects in notice to the mortgagee. In *Frey*, this Court found that the plaintiffs could not challenge the state’s deed as void or voidable on the basis that another owner never received notice of the tax sale and held that the plaintiffs did not have standing to assert such a claim on behalf of another. *Id.*, 308. Moreover, plaintiff’s reliance on *Detroit v John J Blake Realty Co*, 144 Mich App 432; 376 NW2d 114 (1984), is misplaced because the appellant in that case was the same party that did not receive proper notice. Furthermore, this decision does not discuss the effect of the improper notice on the former property owner.

Plaintiff next challenges the trial court’s ruling that its claims were barred by the six-month limitation period found in MCL 211.431. Plaintiff argues that MCL 211.431 does not apply to the city’s claim to forty-one of the fifty-one parcels of property at issue. We find no merit to this argument. MCL 211.431 was raised in the trial court only with respect to the ten remaining parcels of property held by the state, not with respect to the forty-one parcels held by the city. The trial court ruled that MCL 211.431 barred plaintiff’s claims against the state alone, not the city. Accordingly, the record does not support plaintiff’s claim that the trial court erroneously applied MCL 211.431 to the property held by the city.

Plaintiff next argues that because Oppmac redeemed the property by paying \$700,000 in back taxes, its own fee ownership of the property was restored. While we express no opinion on the effect of redemption, we agree that the record supports plaintiff’s contention that Oppmac redeemed the property with its \$700,000 payment. The trial court itself specifically articulated

on the record that Oppmac had redeemed the property, and the trial court's orders support the trial court's finding in this regard.

Because Oppmac redeemed the property, we reverse the trial court's grant of summary disposition in defendants' favor. We express no opinion on the effect of Oppmac's redemption on the ownership of the property. On remand, the trial court shall determine the effect of Oppmac's redemption: whether the city no longer has any interest in the subject property and plaintiff holds title subject to Oppmac's mortgage; whether the city has title to the property, given that the State of Michigan was the last to foreclose on the subject property; or whether the city owns the property subject to Oppmac's mortgage.

II. Docket No. 241137

Oppmac makes many of the same arguments advanced by plaintiff in support of its own claim that plaintiff's interest in the property was restored. For the reasons articulated in our discussion of Docket No. 241168, we hold that the lack of notice to the mortgagee did not revive plaintiff's ownership interest in the property. Although the record supports Oppmac's contention that it redeemed the property by paying \$700,000 in back taxes, there is no evidence in the lower court record that a redemption deed was issued. On remand, the trial court shall make a finding with respect to the application of MCL 211.131c(4).

Oppmac asserts that the trial court erred in failing to conclusively resolve the question of ownership of the property or decide whether Oppmac has a valid first mortgage on the property. As intervening plaintiff, Oppmac sought as relief an order stating that plaintiff's title to the property was subject to the mortgage interest of the original mortgagee, or, in the alternative, recovery of any damages awarded to plaintiff to cure its default under the mortgage. On remand, as explained above in the discussion of Docket No. 241168, the trial court's determination of the effect of Oppmac's redemption may necessitate a determination that the owner of the property holds title subject to Oppmac's mortgage.

Reversed and remanded. Jurisdiction is not retained.

/s/ Helene N. White

/s/ Stephen L. Borrello

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and DIAMOND DISMANTLING, INC.,

Defendants.

Before: Borrello, P.J., and White and Smolenski, JJ.

SMOLENSKI, J. (*dissenting*).

I respectfully dissent because I do not believe that the facts on the record support a determination that Oppmac redeemed the property in question. In all other aspects, I agree with the majority opinion.

/s/ Michael R. Smolenski