STATE OF MICHIGAN

COURT OF APPEALS

NEW JERUSALEM DELIVERANCE CHURCH, Plaintiff-Appellant,	UNPUBLISHED January 21, 2014
v	No. 309571 Oakland Circuit Court
EVANGELICAL CHRISTIAN CREDIT UNION, Defendant-Appellee.	LC No. 2011-119411-CH

Before: STEPHENS, P.J., and M. J. KELLY and RIORDAN, JJ.

PER CURIAM.

In this dispute arising out of a foreclosure sale, plaintiff New Jerusalem Deliverance Church (New Jerusalem) appeals of right the trial court's order granting defendant Evangelical Christian Credit Union's motion for summary disposition. Because we conclude there were no errors warranting relief, we affirm.

In February 2005, New Jerusalem obtained a loan for more than $2.4 million from the Credit Union to refinance its real property and granted the Credit Union a mortgage to secure the loan's repayment. After New Jerusalem stopped making payments on the note in September 2008, the Credit Union began proceedings to foreclose by advertisement. The property was scheduled to be sold in May 2009, but New Jerusalem filed for bankruptcy protection. The Credit Union obtained a lift of the bankruptcy stay and purchased the property at a foreclosure sale in December 2009.

In June 2010, New Jerusalem sued the Credit Union in federal court. It alleged that the foreclosure against its real property was invalid on a variety of grounds. The federal court dismissed New Jerusalem's claims in April 2011.

In May 2011, New Jerusalem sued to quiet title to the property in the circuit court. It again challenged the validity of the sheriff's sale; specifically, it claimed that the special deputy was not validly appointed. The trial court granted the Credit Unions motion under MCR 2.116(C)(10) and dismissed New Jerusalem's complaint.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A trial court properly dismisses a claim under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law."

New Jerusalem did not redeem the property at issue before the expiration of the statutory six-month redemption period. At the end of the redemption period, "all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage, or at any time thereafter" vested in the grantee under the sheriff's deed. MCL 600.3236; *Piotrowski v State Land Office Bd*, 302 Mich 179, 187; 4 NW2d 514 (1942) (stating that the plaintiffs' rights were extinguished at the expiration of the redemption period). "'We accept as a general rule that the right to redeem under present statutes is a legal right and can neither be enlarged nor abridged by the courts.'" *Senters v Ottawa Savings Bank, FSB*, 443 Mich 45, 54; 503 NW2d 639 (1993), quoting *Gordon Grossman Bldg Co v Elliott*, 382 Mich 596, 603; 171 NW2d 441 (1969). The requirements for redemption are specified in the redemption statute, MCL 600.3240, "leaving no room for equitable considerations absent fraud, accident, or mistake." *Senters*, 443 Mich at 55.[1] Whether equitable relief may be obtained from the statutory requirements depends on the foreclosure proceeding, not the mortgagor's situation. See *Freeman v Wozniak*, 241 Mich App 633, 637-638; 617 NW2d 46 (2000) (explaining that the "[p]laintiff cannot argue that there was fraud, accident, or mistake because plaintiff readily conceded that the foreclosure procedure was technically proper" and the plaintiff's mental incompetence was immaterial).

Even where a party files suit before the expiration of the redemption period, a party seeking to set aside a foreclosure sale on the basis of defects or irregularities in a foreclosure proceeding must show prejudice. *Kim v JP Morgan Chase Bank, NA*, 493 Mich 98, 115; 825 NW2d 329 (2012). And even when there are defects or irregularities in the foreclosure proceeding, the foreclosure is merely "voidable, not void ab initio":

> In this regard, to set aside the foreclosure sale, plaintiffs must show that they were prejudiced by defendant's failure to comply with MCL 600.3204. To demonstrate such prejudice, they must show that they would have been in a better position to preserve their interest in the property absent defendant's noncompliance with the statute. [*Id*. at 115-116.]

In the present case, New Jerusalem's grounds for challenging the foreclosure sale do not involve any allegations of misconduct or irregularity that are specific to the sale of the property. It has never alleged or argued any failure to comply with statutory requirements for foreclosure. New Jerusalem does not claim that a defect in notice or the manner in which the foreclosure proceeding was conducted affected it in any way. Instead, New Jerusalem attacks the validity of the appointment of the person who conducted the sheriff's sale and the validity of the contract between his employer and the county. Assuming arguendo that New Jerusalem might able to establish irregularities involving the appointment of the special deputy, this would not amount to a defect or irregularity in the foreclosure proceeding itself. Furthermore, even if we treated the allegations as involving a defect or irregularity in the foreclosure proceeding, the foreclosure would merely be voidable. *Kim*, 493 Mich at 115. Accordingly, it would also have to demonstrate that the defect or irregularity prejudiced it in order to warrant relief; it would have to

[1] Some decisions refer to "equitable extension of the period to redeem." See, e.g., *Schulthies v Barron*, 16 Mich App 246, 248; 167 NW2d 784 (1969).

"demonstrate that [it] would have been in a better position to preserve [its] interest in the property" absent the defect or irregularity. *Id.* at 115-116. New Jerusalem focuses on the circumstances that preceded the special deputy's appointment, but those circumstances had no bearing on New Jerusalem's ability to preserve its interest in the property. Therefore, New Jerusalem's attack on the foreclosure proceeding does not provide a basis for invalidating the sale.

Fraud may provide a basis for relief from the effects of the sheriff's deed and expiration of the redemption period. See *Senters*, 443 Mich at 55; *Kubicki v Mtg Electronic Registration Sys*, 292 Mich App 287, 289; 807 NW2d 433 (2011). However, the fraud must pertain to the conduct of the foreclosure process:

> Courts of equity have large powers for relief against the consequences of inevitable accident in private dealings, and may doubtless control their own process and decrees to that end. But we think there is no such power to relieve against statutory forfeitures. Where a valid legislative act has determined the conditions on which rights shall vest or be forfeited, and there has been no fraud in conducting the legal measures, no court can interpose conditions or qualifications in violation of the statute. The parties have a right to stand upon the terms of the law. This principle has not been open to controversy, and is familiar and elementary. [*Heimerdinger v Heimerdinger*, 299 Mich 149, 154; 299 NW 844 (1941) (quotation marks and citation omitted).]

None of the allegations concerning the appointment of the special deputy involve fraud in the manner in which this sale was conducted. Because the basis for New Jerusalem's claim did not provide a viable means to challenge the sheriff's deed, the Credit Union was entitled to summary disposition.

New Jerusalem also challenges the trial court's decision to foreclose further discovery from the special deputy before a decision on the Credit Union's motion for summary disposition. This Court reviews a trial court's decision concerning a motion for discovery for an abuse of discretion. *Linebaugh v Sheraton Mich Corp*, 198 Mich App 335, 343; 497 NW2d 585 (1993).

As this Court recently explained, Michigan courts are committed to providing litigants with broad discovery:

> "This state has a strong historical commitment to a far-reaching, open, and effective discovery practice." *Dorris v Detroit Osteopathic Hosp Corp*, 460 Mich. 26, 36; 594 NW2d 455 (1999). To that end, the parties "may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . including the existence, description, nature, custody, condition, and location of books, documents, other tangible things, or electronically stored information and the identity and location of persons having knowledge of a discoverable matter." MCR 2.302(B)(1). Indeed, all information is subject to discovery, including information that will be inadmissible at trial, as long as "the information sought appears reasonably calculated to lead to the discovery of admissible evidence." *Id.*; *Harrison v Olde*

Financial Corp, 225 Mich App 601, 614; 572 NW2d 679 (1997). [*Thomai v Miba Hydramechanica Corp*, ___ Mich App ___, ___; ___ NW2d ___ (2013) (Docket No. 310755).]

Nevertheless, trial courts also have the discretion to limit discovery. *Id.* A trial court should limit discovery when necessary to protect the opposing party from excessive, abusive, or irrelevant discovery requests. *Cabrera v Ekema*, 265 Mich App 402, 407; 695 NW2d 78 (2005).

Here, the trial court declined to order further discovery to explore possible misconduct or irregularities in the special deputy's appointment process until after the court evaluated the Credit Union's arguments that New Jerusalem's allegations (already supported by some evidence, according to New Jerusalem) were insufficient to justify setting aside the sheriff's sale. Having concluded that the appointment and the circumstances that led to it are not grounds for setting aside the sheriff's sale, we further conclude that the trial court's suspension of discovery on those matters was not an abuse of discretion.

Lastly, New Jerusalem challenges the court's award of sanctions under MCR 2.114. We conclude that we lack jurisdiction to consider this issue. The trial court entered orders granting summary disposition and ordering costs and fees in February 2012. New Jerusalem appealed in April 2012. Approximately two months later, the court entered the judgment awarding the Credit Union its costs and attorney fees of $15,581.99.

There can be more than one final judgment or order in an action. *Avery v Demetropoulos*, 209 Mich App 500, 502-503; 531 NW2d 720 (1994). "An order to allow attorney fees after entry of an order disposing of the meritorious question is one of the specific circumstances where separate final orders are recognized." *Id.*; see also MCR 7.202(6)(a)(*iv*) (defining a final order or judgment as "a postjudgment order awarding or denying attorney fees and costs"). New Jerusalem asserts that the orders entered in February 2012, were both final orders. It is correct that the order granting summary disposition was a final order. MCR 7.202(6)(a)(*i*); *Baitinger v Brisson*, 230 Mich App 112, 116; 583 NW2d 481 (1998). However, the final order with respect to the sanctions is the judgment that specified the amount. *John J Fannon Co v Fannon Prod*, 269 Mich App 162, 164-167; 712 NW2d 731 (2005). A plaintiff is required to file a separate claim of appeal from a postjudgment order awarding costs and attorney fees. *McIntosh v McIntosh*, 282 Mich App 471, 484; 768 NW2d 325 (2009). New Jerusalem did not file a separate appeal from that judgment. Therefore, this Court lacks jurisdiction to consider the issue. *Id.*

There were no errors warranting relief.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Michael J. Kelly
/s/ Michael J. Riordan