STATE OF MICHIGAN

IN THE SUPREME COURT

Appeal from the Washtenaw County Circuit Court,
Honorable Archie C. Brown

DAN-KAI TUS and NU CHEN YEN TUS,

Plaintiffs/Counter Defendants-
Appellants,

v

Docket No. 139769

SHIRLEY HURT f/k/a SHIRLEY ROBBINS,

Defendant,

and

STERLING MORTGAGE AND
INVESTMENT COMPANY,

Defendant/Counter Plaintiff-
Appellee.

BRIEF ON APPEAL — APPELLANTS

MADDIN, HAUSER, WARTELL,
ROTH & HELLER, P.C.
By: Mark H. Fink (P43715)
David E. Hart (P45084)
Lavinia S. Biasell (P66018)
Attorneys for Plaintiffs-Appellants
28400 Northwestern Highway, Third Floor
Southfield, MI 48034
Telephone: (248) 354-4030
Facsimile: (248) 355-1342

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innocent third party if permitted to divest the third party of title to property worth more than $150,000.00 through foreclosure of a mortgage on which the original unpaid balance was less than $9,000.00 — a court sitting in equity has the power to set aside the sheriff's deed, award the mortgagee money damages equal to the unpaid balance as of the date of the sheriff's sale, and impose an equitable mortgage on the property to secure payment of the monetary award. 24

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STATEMENT OF JURISDICTION

The Washtenaw County Circuit Court entered its final order in this case on September 14, 2007, and defendant Sterling Mortgage and Investment Company timely claimed an appeal of right on October 2, 2007. Plaintiffs cross appealed. The Court of Appeals reversed in part and affirmed in part in an Opinion and Order issued June 25, 2009. Plaintiffs timely moved for reconsideration on July 16, 2009, which the Court of Appeals denied on August 25, 2009. Therefore, this Court has jurisdiction under MCR 7.301(A)(7). Within 42 days thereafter, on October 6, 2009, Plaintiffs sought leave to appeal to this Court, which the Court granted on May 7, 2010.

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QUESTIONS PRESENTED

Summary of the Material Facts

Dan Kai Tus and Nu Chen Yen Tus purchased a home in June 2000 for $151,900.00. The title insurance agency that prepared the title insurance commitment for the closing discovered that the sellers had given Sterling Mortgage and Investment Company a mortgage on the property in 1990, which had not been discharged of record. Contacting Sterling Mortgage to inquire about the status of the mortgage, the agency was told that the mortgage had been paid off and a discharge would be issued. The Tuses, having no knowledge of the mortgage, proceeded to close the sale.

Five and a half years later, by which time the mortgage had been in default for more than 14 years, Sterling Mortgage foreclosed by advertisement. During that time, throughout which Sterling Mortgage had sat on its hands, $18,444.66 in unpaid interest had accrued on the principal balance of $8,040.88. Sterling Mortgage purchased the property for $27,351.54 at a foreclosure sale held in March 2006.

Before the statutory redemption period expired, the Tuses commenced this action asserting, among other things, a claim to quiet title. The Tuses also asked the trial court to extend the redemption period so as to maintain the status quo pending determination of the parties' rights.

I. Reduced to its essence, the trial court's Judgment requires the Tuses to pay off, and Sterling Mortgage to discharge, the mortgage, which is replaced by a new lien securing payment of the money judgment. The Tuses tendered full payment of the money judgment to Sterling Mortgage. *At Sterling Mortgage's request*, the trial court ordered that the money be placed in escrow. Sterling Mortgage deposited the funds into its own account, and then wrote a check for the same amount to the "Washtenaw Circuit Court." Under Michigan law, tender of the

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judgment amount constitutes satisfaction of the judgment and interest ceases to accrue as of the date of such tender. If the trial court's Judgment is reversed (as was the case in the Court of Appeals), the Sheriff's Deed will be effective, the Mortgage will have been discharged by the foreclosure, and Sterling Mortgage will not be entitled to payment of the mortgage balance (in addition to having taken title to the Property, which is worth more than five times the amount of the balance owed on the mortgage). Sterling Mortgage's refusal to unconditionally reject the Tuses' tender of the judgment amount is, therefore, entirely inconsistent with its position on appeal. Consequently, the Judgment must be deemed to have been satisfied by the actual payment of the judgment amount, in accordance with the very terms that Sterling Mortgage sought and obtained over the Tuses' objection. Likewise, having thus accepted payment of the judgment amount, Sterling Mortgage must be deemed to have consented to the terms of the Judgment, waived its right to appeal the Judgment, or both. Did Sterling Mortgage have standing to appeal the Judgment?

This issue was not before the trial court.

The Court of Appeals said "Yes."

Plaintiffs-Appellants contend that the answer is "No."

II. In light of the foregoing facts, given that a quiet title action is equitable in nature and further considering that nothing in MCL 600.3240 can be read as precluding such relief where the redemption period has not yet expired, did the trial court have the power to enter an order maintaining the status quo by extending the redemption period until the parties' respective rights were determined?

The trial court said "Yes" and granted the Tuses such relief.

The Court of Appeals said "No."

Plaintiffs-Appellants contend that the answer is "Yes."

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III. Given that a quiet title action is equitable in nature and considering that nothing in MCL 600.3240 can be read as precluding such relief in appropriate circumstances — as where the foreclosing mortgagee has sat on its hands for almost 15 years, misled subsequent purchasers by affirmatively representing that its mortgage had been satisfied, and would be unjustly enriched as a result of its own inaction at the expense of an innocent third party if permitted to divest the third party of title to property worth more than $150,000.00 through foreclosure of a mortgage on which the original unpaid balance was less than $9,000.00 — does a court sitting in equity have the power to set aside the sheriff's deed, award the mortgagee money damages equal to the balance owing as of the date of the sheriff's sale, and impose an equitable mortgage on the property to secure payment of the monetary award?

The trial court determined that such relief would be equitable and appropriate.

The Court of Appeals held that the trial court erred in quieting title in favor of the Tuses.

Plaintiffs-Appellants contend that the answer is "Yes."

IV. Does the evidence support an inference that Sterling Mortgage would receive a benefit in the form of a windfall, at the Tuses' expense, from its unjustifiably delayed foreclosure of its mortgage and that it would be unfair to permit it to retain such a windfall?

The trial court said "Yes."

The Court of Appeals said "No."

Plaintiffs-Appellants contend that the answer is "Yes."

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V. Sterling Mortgage moved for summary disposition long after the close of discovery. The motion was based, in part, upon two affirmative defenses it had never pleaded. The Tuses argued that those issues were not properly before the court but had no choice but to address those defenses in their arguments opposing the motion. In an effort to overcome the deficiency in its pleadings, Sterling Mortgage filed amended affirmative defenses a month later, without leave of court.

The court denied Sterling Mortgage's motion without specifically addressing either the substance of the new defenses or the effect of Sterling Mortgage's unauthorized filing of amended affirmative defenses. It did not, at *any* time, order that leave to amend had been denied. Consequently, to ensure that Sterling Mortgage would not attempt to assert the new defenses at trial, the Tuses moved to strike Sterling Mortgage's amended affirmative defenses on the grounds that they were "not drawn in conformity with the[ ] rules" and such amendment would be extremely prejudicial to them at that stage of the litigation.

The court denied the Tuses' motion to strike on the ground that the issue presented had already been decided, which it had not. In addition, the court sanctioned the Tuses for having moved to strike the amended affirmative defenses, notwithstanding that the mere denial of summary disposition based upon a particular defense does not bar its assertion at trial. Did the Tuses engage in sanctionable misconduct by filing a motion permitted by the court rules, for a legitimate purpose, seeking relief expressly provided for in the Michigan Court Rules, and which the court erroneously concluded had already been granted?

The trial court said "Yes."

The Court of Appeals said that the Tuses failed to support their position by citation to authority.

Plaintiffs-Appellants contend that both of the lower courts erred.

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INTRODUCTION

This is, at its core, an action to determine the parties' respective rights in certain real property — a quiet title action — between the fee owners of the property and a mortgagee. The issues are not complicated; the danger in reviewing the case lies in the possibility of becoming mired in semantics and losing sight of the reality.

It will be noted more than once in the following pages that quiet title is an equitable action. As such, it is the facts, not the lexicon, upon which a court of equity must focus to determine *whether* equitable relief is appropriate and *what* relief is appropriate. Where, for example, one party, by its own lack of diligence in enforcing its rights, obtains a windfall at the expense of another, it matters not whether the result is described as "unjust enrichment," "windfall," or just plain unfair; in such a case there is no adequate remedy at law, hence it is not improper to grant *equitable* relief. To the contrary, that is the very definition of equity and its *raison d'etre*.

For the same reason, in the context of foreclosing a mortgage, a court sitting in equity must look at the totality of the circumstances to determine whether and what relief is appropriate and, specifically, whether it is equitable to permit the mortgagee to obtain and retain a windfall (or be "unjustly enriched") at the expense of an innocent party And where, as here, that is the ultimate fact that will determine the outcome of the quiet title action, words such as "extend," which have no defined meaning as a legal term of art, are a poor substitute for facts and only obscure the reality.

If the Court considers the totality of the circumstances and the equitable powers of the circuit courts (as well as the principles of equity and, of course, applicable law), it will affirm the judgment of the trial court on the substantive issues.

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STATEMENT OF THE MATERIAL FACTS

Facts Relating to the Issues on Appeal

For convenience, the property that is the subject of this matter is referred to simply as "the Property" or "the Subject Property," and the mortgage at issue is referred to as "the Mortgage."

- William Hurt, a single man, granted a mortgage on the Subject Property to Sterling Mortgage & Investment Co. … on October 10, 1990 [*Joint Trial Exhibits 1 and 3* (**Apx. pp. 204a, 209a**); *see also, Joint Trial Exhibit 4*[1] (**Apx. p. 211a**)].

- The Mortgage secured a loan in the amount of $76,500.00 [*Joint Trial Exhibit 4* (**Apx. p. 211a**)].

- The note secured by the Mortgage ("the Mortgage Note") carried the interest rate of 15.5% [*Joint Trial Exhibit 4* (**Apx. p. 211a**)].

- The Mortgage was recorded on October 11, 1990 in Liber 2444, Page 538, Washtenaw County Records [*Joint Trial Exhibit 1* (**Apx. p. 204a**)].

- Several years later, William Hurt executed a quit claim deed conveying the Subject Property to himself and his new wife, Defendant Shirley Hurt [*Joint Trial Exhibit 6* (**Apx. p. 214a**)].

- The last payment made on the Mortgage Note was made on May 15, 1991 [*Joint Trial Exhibit 5* (**Apx. p. 213a**)].

- The balance due and owing on the Mortgage Note as of May 15, 1991 was $8,040.88 [*Joint Trial Exhibit 5* (**Apx. p. 213a**)].

- In 2000, William Hurt passed away [*Joint Trial Exhibit 7* (**Apx. p. 215a**).

- On June 28, 2000, Defendant Shirley Hurt sold and conveyed the Subject Property to Dan-Kai Tus and Nu Chen Tus (the Appellants) via a warranty deed [*Joint Trial Exhibit 17* (**Apx. p. 230a**); *Tr. 8/20/07 at 26* (**Apx. p. 263a**)].

- The Tuses paid Shirley Hurt $151,900.00 for the Property [*Joint Trial Exhibits 8* (**Apx. p. 216a**), *12* (**Apx. p. 223a**), *13* (**Apx. p. 225a**), *14* (**Apx. p. 226a**), *17* (**Apx. p. 230a**)].

- Gregg Ottaviani is the president and owner of American Title Company of Washtenaw ("American Title") [*Tr. 8/20/07 at 19* (**Apx. p. 251a**), *testimony of Gregg Ottaviani*].

[1] Joint Trial Exhibits 1-23 were admitted by stipulation. [*Stipulated Joint Exhibit List, filed 8/16/07; Tr. 8/20/07 at 18* (**Apx. p. 251a**)].

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- American Title issued a title insurance commitment as agent for Fidelity National Title Insurance Company [*Joint Trial Exhibit 18* (**Apx. p. 231a**); *Tr. 8/20/07 at 39-40*(**Apx. pp. 256a-257a**)] and acted as the closing agent for the sale by Shirley Hurt to the Tuses [*Tr. 8/20/07 at 40-41* (**Apx. p. 257a**), *testimony of Gregg Ottaviani*].

- A title search conducted by American Title before the closing disclosed an "open" (*i.e.* not discharged of record) second mortgage held by Sterling Mortgage (the Mortgage at issue) and an open mortgage dated 1983 given by William Hurt's predecessors in title, Joseph and Gwendolyn Brickley ("the Brickley Mortgage") [*Tr. 8/20/07 at 30-32* (**Apx. pp. 254a-255a**), *testimony of Gregg Ottaviani*].

- Mr. Ottaviani testified that, once an open mortgage has been identified, it is American Title's policy to "secure payoff information, "specifically a payoff letter, as to whether – how much the balance is or if there is a balance at all," which is not always the case. [*Tr. 8/20/07 at 23-24, testimony of Gregg Ottaviani*] However, it is also American Title's standard procedure to discard payoff letters and other nonessential documents after two years in order to "compress" its files [*Tr. 8/20/07 at 32-33* (**Apx. p. 255a**), *testimony of Gregg Ottaviani*].

- Notwithstanding the absence of a payoff letter from Sterling Mortgage in American Title's file at the time of trial, Mr. Ottaviani unequivocally testified that American Title followed its standard practice in connection with the Hurt/Tus transaction, payoff letters were requested, and there is nothing in American Title's file that would make him think that this was not done [*Tr. 8/20/07 at 32-33* (**Apx. p. 255a**) *(see also, p 45* (**Apx. p. 258a**)*), testimony of Gregg Ottaviani*].

- Mr. Ottaviani, again noting that American Title's file had been purged of nonessential documents, further testified that he had seen a written authorization by Shirley Hurt to obtain payoff information [*Tr. 8/20/07 at 80-81* (**Apx. p. 267a**), *testimony of Gregg Ottaviani*].

- The HUD settlement statement ("HUD-1") listed both the Sterling Mortgage and the Brickley Mortgage [*Joint Trial Exhibit 12* (**Apx. p. 223a**)]. The payoff amount for the Brickley Mortgage is shown as $48,228.97; the payoff amount for the Sterling Mortgage is blank [*Joint Trial Exhibit 12* (**Apx. p. 223a**)]. Mr. Ottaviani unequivocally testified that that was because American Title had "secured information that there was no balance owing on that – ..."[*Tr. 8/20/07 at 35* (**Apx. p. 255a**), *testimony of Gregg Ottaviani (objection on ground of hearsay initially sustained then overruled, pp 35-39* (**Apx. p. 255a-256a**)*)*].

- The "marked up copy" of the title insurance commitment [*Joint Trial Exhibit 18 (***Apx. p. 231a**)] also indicates that a payoff letter had been obtained [*Tr. 8/20/07 at 39-40* (**Apx. pp. 256a-257a**), *testimony of Gregg Ottaviani*].

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- Mr. Ottaviani personally called Sterling Mortgage "on the day of the closing to confirm that there was still a zero balance on this loan." [*Tr. 8/20/07 at 40-43* (**Apx. p. 257a**) *(see also, p 45* (**Apx. p. 258a**)*), testimony of Gregg Ottaviani*].

- Sterling Mortgage attacked Mr. Ottaviani's credibility on such grounds as the absence of certain documents in American Title's seven-year-old file. Sterling Mortgage's own president, Maurice Janowitz [*Tr. 8/20/07 at 144* (**Apx. p. 283a**), *testimony of Maurice Janowitz*], however, testified that (i) Sterling Mortgage's file on the Mortgage (like American Title's file on the Hurt/Tus transaction) did not contain pertinent documents records of advances and disbursements [*Tr. 8/20/07 at 98-104* (**Apx. pp. 271a-273a**), *testimony of Maurice Janowitz*].

- Mr. Janowitz admitted that Sterling Mortgage had known at least as early as August or September of 2005 that the Mortgage had been in default since 1991 and knew (from a title search certificate in its possession [*Joint Trial Exhibit 20* (**Apx. p. 235a**)]) that the mortgagor, William Hurt, was no longer the record title owner [*Tr. 8/20/07 at 128, testimony of Maurice Janowitz* (**Apx. p. 279a**)] but took no action until January 2006, when its attorney sent a rather uninformative letter to the long-deceased mortgagor — at the address of the Property, which was shown on the title search certificate to have been conveyed to the Tuses [*Joint Trial Exhibit 21* (**Apx. p. 236a**); *Tr. 8/20/07 at 131-133* (**Apx. pp. 279a-280a**), *testimony of Maurice Janowitz*].

- Sterling Mortgage began the foreclosure by advertisement process by publication on February 23, 2006 [*Joint Trial Exhibit 23* (**Apx. p. 238a**), *Affidavit of Publication*].

- Sterling Mortgage eventually commenced foreclosure proceedings, which ultimately resulted in the issuance of a sheriff's deed to Sterling Mortgage on March 30, 2006 [*Joint Trial Exhibit 23* (**Apx. p. 238a**)].

- Sterling Mortgage sat on its hands and took no action with respect to the default for 14 years and 9 months after the last payment was made on the Mortgage Note, when it commenced foreclosure proceedings [*Exhibit G to Plaintiffs' Response to Motion for Summary Disposition at 46-48* (**Apx. p. 175a**)].

- Sterling Mortgage asserted that the default "kind of fell between the cracks" and expressly admitted that that it had failed to act diligently ("it was not attentively pursued") [*Exhibit G to Plaintiffs' Response to Motion for Summary Disposition at 46-48* (**Apx. p. 175a**); *see also, Tr. 8/20/07 at 117, 119-121* (**Apx. pp. 276a-277a**), *testimony of Maurice Janowitz*].

- The balance due and owing on the Mortgage Note at the time of the default was approximately $8,143.00 ($8,040.88 plus interest *at 15.5%* from the date of the last payment made until the next payment came due) [*Joint Trial Exhibit 5* (**Apx. p. 213a**)].

- The balance due and owing on the Mortgage Note at the time of the foreclosure sale, including accrued interest, was $27,351.54 [*Joint Trial Exhibit 23* (**Apx. p. 238a**)].

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- Sterling Mortgage was the purchaser at the foreclosure sale [*Joint Trial Exhibit 23* (**Apx. p. 238a**)]; therefore, there was and is no third party whose interest was affected by the foreclosure or whose interest will be affected by outcome of this action.

- The Tuses commenced this action *more than seven weeks* before the expiration of the redemption period stated in the notice of foreclosure [*Complaint to Quiet Title filed 8/17/06* (**Apx. p. 1a**)].

- The trial court granted the Tuses' motion to extend the extension period, ordering that "the redemption period . . . is hereby extended until thirty (30) days after such time as a final Order has entered in this case." [*October 5, 2006 Order Granting Plaintiffs' Motion to Extend Redemption Period* (**Apx. p. 29a**)].

- After a bench trial the trial court entered a judgment, among other things:

  a. Dismissing the Tuses' claim of promissory estoppel;

  b. Declaring that Sterling Mortgage "had the statutory authority" to foreclose the Mortgage;

  c. Finding, among other things, that Sterling Mortgage will be "unjustly enriched" as a result of its "delay";

  d. Quieting fee title in the Tuses;

  e. Setting aside the Sheriff's Deed;

  f. Awarding Sterling Mortgage money damages in an amount equal to the balance on the Mortgage as of the date of the foreclosure sale ($27,351.54); and

  g. Imposing an equitable lien on the Property to secure payment of the monetary award. [*Judgment, September 14, 2007* (**Apx. p. 313a**)].

A supplemental statement of the facts relating to the trial court's imposition of sanctions on the Tuses is set forth in Part III below, at p. 30.

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SUMMARY OF ARGUMENT

This appeal has two parts. The first part is substantive and involves two issues: the trial court's order extending the redemption period and the relief granted in its final judgment. The second part is procedural; it arises from the trial court's imposition of sanctions on the Tuses for having filed a motion to strike amended affirmative defenses first raised by Sterling Mortgage in its motion for summary disposition after the close of discovery.

The trial court had and properly exercised the power to extend the redemption period, which had not yet expired when the Tuses commenced this action, until 30 days after the entry of a final order determining the rights of the parties.

Right or wrong, the court determined that Sterling Mortgage "had the statutory authority" to foreclose its mortgage. However, the court set aside the sheriff's deed and ruled that the Tuses must pay Sterling Bank the balance owing on the mortgage as of the date of the foreclosure sale, which is entirely consistent with the extension of the redemption period. The Tuses tendered full payment of the judgment amount but, rather than reject the payment, Sterling Mortgage "hedged its bet" by asking the court (before it even claimed an appeal) to hold the funds in escrow pending appeal. The court granted that request, thereby effectively — and inappropriately — compelling the (prospective) *appellee* to post an appeal bond. The Tuses contend that Sterling Bank thus effectively accepted tender of the judgment amount and thereby waived the right to appeal.

The Tuses further contend that having "the statutory authority" to foreclose the mortgage is not dispositive with respect to the question of Sterling Bank's right to do so. Rather, Sterling Bank forfeited the right to enforce the mortgage by (i) misrepresenting to the Tuses before they acquired title to the mortgaged property that the mortgage had been paid off and (ii) sitting on its

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hands for nearly 15 years while interest accrued at the outrageous rate of 15.5%, so that that the balance owing on the $8,040.88 due at the time of the last payment (ten years before the Tuses purchased the property) rose to $27,351.54 at the time of the foreclosure. Thus, the court had the authority, under its equitable powers, to set aside the sheriff's deed.

Finally, the Tuses contend that the trial court abused its discretion by imposing a $1,000.00 sanction for having filed a motion that was entirely justified and appropriate in the circumstances. The factual bases for the court's decision, *i.e.* that the motion "border[ed] on brinkmanship" and sought relief that had already been granted were patently erroneous and the imposition of sanctions for filing a motion permitted by the court rules, for a legitimate purpose, seeking relief expressly provided in the Michigan Court Rules was not a principled outcome.

ARGUMENT

I.

Sterling Mortgage lacked standing to appeal to the Court of Appeals.

Standard of Review

Whether a party has standing is a question of law that is reviewed de novo.[2]

Sterling Mortgage Waived or Forfeited the Right to Appeal by Effectively Accepting the Tuses' Tender of the Judgment Amount

Reduced to its essence, the trial court's Judgment requires the Tuses to pay off, and Sterling Mortgage to discharge, the mortgage, which is replaced by a new lien securing payment of the money judgment. The money judgment is the amount required to redeem the property from foreclosure. *The Tuses tendered full payment of the money judgment/redemption amount* [*Sterling Mortgage & Investment Co.'s Motion for Instruction ("Motion for Instruction"), p 2*] but, *at Sterling*

[2] See, *e.g., Manuel v Gill,* 481 Mich 637, 642; 753 NW2d 48 (2008).

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Mortgage's request [*id.*], the trial court ordered that the funds be placed in escrow [*Order, 10/22/07*].

Under Michigan law, *tender of the judgment amount constitutes satisfaction of the judgment* and interest ceases to accrue as of the date of such tender.[3] If Sterling Mortgage prevails on appeal, the Sheriff's Deed will be effective, the Mortgage will have been discharged by the foreclosure,[4] *and Sterling Mortgage will not be entitled to the escrowed fund* as it will take title to the Property (which is worth more than five times the amount of the balance owed on the mortgage). Sterling Mortgage's refusal to *unconditionally reject* the Tuses' tender of the judgment amount is, therefore, entirely inconsistent with its position on appeal and — bearing in mind that it was Sterling Mortgage that appealed the Judgment — the trial court's accession to its request to have the funds held in escrow operates, in effect, as having compelled the *appellee* to post an appeal bond. Consequently, the Judgment should be deemed to have been satisfied by the *actual payment* of the judgment amount, in accordance with the very terms that Sterling Mortgage sought [*Plaintiffs/Counter-Defendants' Motion for Instruction* (**Apx. pp. 314a-323a**)] and obtained over the Tuses' objection [*Plaintiffs/Counter-Defendants' Brief in Support of Response to Sterling Mortgage & Investment Co.'s Motion for Instruction* (**Apx. pp. 324a-333a**)]. Likewise, having thus accepted payment of the judgment amount, Sterling Mortgage should be deemed to have

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[3] See MCL 600.6013 (interest continues to accrue until judgment is satisfied). See also, *Coughlin v Dean*, 174 Mich App 346; 435 NW2d 792 (1989) (interest continued to accrue during appeal because the judgment was not actually *tendered*).

[4] *Senters v Ottawa Sav Bank, FSB,* 443 Mich 45, 50; 503 NW2d 639 (1993) ("Upon a foreclosure sale, the mortgage debt is considered paid and the mortgage lien discharged.").

consented to the terms of the Judgment, waived its right to appeal the Judgment, or both. [5] In either case, however, Sterling Mortgage forfeited its right to appeal. Therefore, the Court of Appeals should have dismissed Sterling Mortgage's appeal.

II.

The trial court properly exercised its equitable powers.

Standard of Review

An action to quiet title is an equitable action. Therefore, the findings of the trial court are reviewed for clear error while its holdings are reviewed de novo.[6]

A.

Given the facts of this case and given that a quiet title action is equitable in nature, and further considering that nothing in MCL 600.3240 can be read as precluding such relief where the redemption period has not yet expired, the trial court properly entered an order *maintaining the status quo* until the parties' respective rights were determined.

The Interplay between Equity and Law

The Court of Appeals stated the "Legal Standards" as follows.

> An action to quiet title is equitable. [Footnote omitted.] However, a court may not act in equity to avoid the application of a statute, regardless of the apparent harshness of the statutory penalty (citing *Stokes v Millen Roofing Co,* 466 Mich 660, 671-672; 649 NW2d 371 (2002).[7]

After a brief discussion of the issue, the court then held that:

> The trial court's decision to quiet title in the Tuses' names, despite the determination that Sterling Mortgage was lawfully entitled to foreclosure on the

[5] See, *e.g., Knowlton v Port Huron,* 355 Mich 448, 456; 94 NW2d 824 (1959) (an appeal from a consent decree cannot be had). See also, *Amerisure Ins Co v Auto-Owners Ins Co,* 262 Mich App 10, 28; 684 NW2d 391 (2004), quoting *Becker v Halliday,* 218 Mich App 576, 578; 554 NW2d 67 (1996) ("a party who accepts satisfaction in whole or in part waives the right to maintain an appeal or seek review of the judgment for error, as long as the appeal or review might result in putting at issue the right to the relief already received").

[6] *Fowler v Doan,* 261 Mich App 595, 598; 683 NW2d 682 (2004).

[7] *Tus v Hurt,* unpublished opinion per curiam of the Court of Appeals issued June 25, 2009 (Docket No. 281007) at 4 [**Apx. p. 338**].

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> mortgage, constituted an impermissible attempt to act in equity to avoid the application of a statute.[8]

In its Order granting leave to appeal this Court directed the parties to:

> [I]nclude among the issues to be briefed the effect, if any, on this case of *Brydges v Emmendorfer,* 311 Mich 274, 279 (1945) (holding that "[t]he statute of limitations does not control the question of laches in equitable actions") and *Stokes v Millen Roofing Co,* 466 Mich 660, 671-672 (2002) (concluding that courts should not avoid the application of a statute under the guise of equity because a statutory penalty is excessively punitive or harsh).

We infer from the Court's directive that it wishes to consider and resolve what might be viewed as conflicting lines of authority, one of which seems to hold that statutes always trump equitable principles and the other indicating that equity has at least some power to provide relief from the operation of law. We believe, however, that the case law leads to a conclusion that lies somewhere between those absolutes. Stated simply, courts of equity possess inherent power to alleviate the effect of a strict *application* of law *that would otherwise lead to an unjust result.*

We do not mean to suggest that such power should be exercised lightly or routinely.[9] Rather, we freely acknowledge that courts should afford great deference to the Legislature under the separation of powers doctrine. On the other hand, it is a long settled principle that "equity follows the law, but not slavishly."[10] Were that not so, "there could never be occasion for the enforcement of equitable doctrine."[11] Indeed, as this Court has observed, "[t]hroughout the great mass of its jurisprudence, equity, instead of following the law, either ignores or openly

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[8] *Id.* at 5 [**Apx. p. 338**].

[9] See, *e.g., Spoon-Shackett Co, Inc v Oakland Co,* 356 Mich 151, 166; 97 NW2d 25 (1959) ("the known remedy provided by equity, in favor of those actually or constructively defrauded, is available now as before in every case-involving taxation or otherwise-where the presented facts are sufficient to shock the conscience of the chancellor").

[10] *Id.* at 165 ("equity's ordinary pursuit of the law is never slavish and ... she ever stands ready to relieve the oppressed from the oppressor's demand for possession or retention of an iniquitously exacted pound of material and sometimes personal flesh").

[11] *Id.*

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disregards and opposes the law."[12] Further, Justice Black, writing for the majority, quoted Cardozo's trenchant observation that, "[l]et the hardship be strong enough and equity will find a way, though many a formula of inaction may seem to bar the path."[13]

If the Court were to hold, in absolute terms, that equity has no place in a case involving a statute, then 800 years of equitable jurisprudence would go out the window. In the early years of English legal jurisprudence:

> [P]ersonal rights, civil rights and the like, as we understand them, were not recognized .... Property and rights and interests therein were paramount and litigation chiefly revolved around such matters. But to the extent of the subject matter of the litigation, and the comparative simplicities of the questions involved, the relief given was that designed to do justice and frequently involved the prevention of wrong or injury, or the specific enforcement of rights, as well as the award of compensation for wrong or injury already committed.
>
> [O]ver [a period of] some 200 years, a hardening process took place in the administration of justice in the courts of law. This is partly traceable to the Provisions of Oxford, in 1258, which expressly forbade the Chancellor to frame new writs to meet new situations, except with the consent of the king and his council. But as England changed from an agricultural to a commercial nation, undoubtedly the complexities thereby brought about introduced new situations involving rights and interferences therewith not previously contemplated and for which no writs and thus no remedial action existed.
>
> Where such situations arose, with no writ or form of action to supply relief, it became common *to resort to the king, in the person of the Chancellor, for relief under the king's prerogative of grace, that arbitrary power of the king to do good and dispense justice.* * * *
>
> The result of the foregoing was the gradual development and establishment of the Chancellor as a judicial officer and of his department, the Chancery, as a court, for the purpose of affording relief that was not available in the courts of law. [Footnotes omitted.][14] (Emphasis added.)

[12] *Id.*, quoting 2 Pomeroy's Equity Jurisprudence (5th ed) § 427, p. 194.

[13] *Id.* at 166, quoting Cardozo, C. J., dissenting in *Graf v Hope Building Corp,* 254 NY 1, 171 NE 884, 887, 70 ALR 984 (NY 1930).

[14] William Q. de Funiak, *Handbook of Modern Equity* (2d ed), pp. 4-5.

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The courts of equity thus evolved into a separate system of jurisprudence possessed with the power to do that which the courts of law could not, in order to ensure that justice be done.[15] And in more than a few cases, that power has been exercised to alleviate injustice caused by the strict application of law, including the statute of frauds,[16] statute of limitations,[17] and notably, redemption from foreclosure.[18]

Laches and Statutes of Limitation

As previously noted, the Court of Appeals based its decision on (i) the premise that "a court may not act in equity to avoid the application of a statute, regardless of the apparent harshness of the statutory penalty" and (ii) the conclusion that the trial court's ruling "constituted an impermissible attempt to act in equity to avoid the application of a statute." The conclusion is incorrect because it is based upon an inapplicable premise.

The Tuses are the plaintiffs. No one has argued and neither of the lower courts found that *the Tuses'* claim is barred by the statute of limitations. Nor have the Tuses claimed that Sterling Mortgage was barred by the statute of limitations from foreclosing its mortgage. The statute of limitations on actions to foreclose a mortgage on real estate[19] is, therefore, of no application at all to the issues presented here. It came up only because Sterling Mortgage cited it in an effort *to*

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[15] Although courts of law and of equity are no longer "separate" in the literal sense, Const 1963, art VI, §5, their underlying substantive concepts have remained largely unchanged. 30A CJS, Equity, §2, p. 160.

[16] See, *e.g., Jenks v Jenks,* 70 Mich App 688; 247 NW2d 588 (1976), *Jaye v Tobin,* 42 Mich App 756, 202 NW2d 712 (1972).

[17] See, *e.g., Rowry v University of Michigan,* 441 Mich 1, 9; 490 NW2d 305 (1992) ("[C]ourts traditionally have not bent to the strictures of a statute of limitations where the law does not supply relief analogous to that afforded in equity. Thus, it is said that ... 'where the relief sought is in its nature one of equitable and not of legal cognizance, and the remedy is of a purely equitable nature, equity follows its own rules [citation omitted].")

[18] See, *e.g., Flynn v Korneffel*, 451 Mich 186, 207; 547 NW2d 249 (1996).

[19] MCL 600.5803.

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avoid the effect of its own unconscionable delay in enforcing the mortgage. And it is Sterling Mortgage's conduct, not the Tuses', that is at issue here.

> [C]ourts traditionally have not bent to the strictures of a statute of limitations where the law does not supply relief analogous to that afforded in equity. Thus, it is said that ... "where the relief sought is in its nature one of equitable and not of legal cognizance, and the remedy is of a purely equitable nature, equity follows its own rule.[20]

Like statutes of limitation, the equitable doctrine of laches is purely a *defense* to a claim[21] and again, no one has argued and neither of the lower courts found that *the Tuses'* claim is barred by laches. Thus, to the extent, if any, that the doctrine has any application here, it is only by analogy. That is, Sterling Mortgage, the *defendant*, sat on its hands for almost 15 years while the value of the mortgaged Property appreciated substantially, and all the while, interest accrued at the outrageous rate of 15.5%. Allowing the default to continue was, therefore, a "no lose" option for Sterling Mortgage, as there were only two possible outcomes: the appreciation in value meant that Sterling Mortgage could make a "credit bid" at the foreclosure sale and acquire title to the Property for a fraction of its value (which it did), while the interest rate guaranteed that it would receive a return of at least 15.5% on its investment (while mortgage rates were steadily falling) even if the mortgagors redeemed. The nearly $19,000 in interest that accrued on the $8,100 principal balance during those 15 years surely presented a tempting reason to allow the default to continue until the eleventh hour.

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[20] *Rowry v University of Michigan,* 441 Mich at 9, quoting *Michigan Ins Co v Brown,* 11 Mich. 265, 272 (1863).

[21] *Brydges v Emmendorfer,* 311 Mich at 280 (laches is purely an equitable defense).

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Construction of MCL 600.5803 and MCL 600.3240

The primary task in construing a statute is to discern and give effect to the intent of the Legislature.[22] The words contained in a statute provide the most reliable evidence of the Legislature's intent.[23] In discerning legislative intent, the Court considers both the plain meaning of the critical words or phrases as well as their placement and purpose in the statutory scheme.[24] The primary purposes to be served by statutes of limitations are (1) to encourage the plaintiffs to diligently pursue claims and (2) to protect the defendants from having to defend against stale and fraudulent claims.[25]

That being said, let us examine the specific language used in MCL 600.5803, which provides, in pertinent part, that:

> No person shall bring or maintain any action or proceeding to foreclose a mortgage on real estate unless he commences the action or proceeding within 15 years after the mortgage becomes due or within 15 years after the last payment was made on the mortgage.

Stated differently — and without the slightest alteration of its substance — the statute provides that an action or proceeding to foreclose a mortgage on real estate must be commenced, if at all, within 15 years after the last payment was made on the mortgage. What the statute *does not* say, however, is that "a person *shall have* 15 years after the last payment was made on the mortgage to bring an action or proceeding to foreclose a mortgage on real estate before such

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[22] *Heindlmeyer v Ottawa Co Concealed Weapons Licensing Bd*, 268 Mich App 202, 216-217; 707 NW2d 353 (2005), citing *Shinholster v Annapolis Hosp*, 471 Mich 540, 548-549; 685 NW2d 275 (2004).

[23] *Id.* at 549. See also, *Cherry Growers, Inc v Agricultural Marketing & Bargaining Bd*, 240 Mich .App 153, 166; 610 NW2d 613 (2000) (first step in discerning the intent of the Legislature is to consider the language of the statute).

[24] *Id.* See also, *Lemmerman v Fealk,* 449 Mich 56, 65; 534 NW2d (1995).

[25] *Id.* at 65. See also. *Stephens v Dixon*, 449 Mich 531, 534; 536 NW2d 755 (1995) (statutes of limitation are procedural devices intended to promote judicial economy and the rights of defendants).

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action is barred by the passage of time." In other words, consistent with the purposes of statutes of limitations, the statute clearly and unambiguously sets an *outer limit* on the time for such an action *but it does not,* by its terms, purport to establish *an unqualified right* to that much time. The Court of Appeals therefore erred in concluding, in absolute terms, that "a mortgagor is expressly entitled to foreclose on a mortgage up to 15 years from the date of the last payment" [Opinion at p. 5 (**Apx. p. 339**)].

It is not within the province of the courts to read into a statute a mandate that the Legislature has not seen fit to incorporate;[26] the courts' responsibility is simply to carry out *the purpose* of the Legislature.[27] But statutes are to be construed "in the most beneficial way which their language will permit to prevent absurdity, hardship, or injustice, to favor public convenience, and to oppose all prejudice to public interests."[28] The purpose of statutes of limitation is to "prevent[] surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared."[29] Consequently, the barring of an action *less* than 15 years after the last payment was made on a

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[26] *Piper v Pettibone Corp*, 450 Mich 565, 572, 542 NW2d 269 (1995).

[27] See, *e.g.*, *Heindlmeyer v Ottawa Co Concealed Weapons Licensing Bd*, 268 Mich App at 217, citing *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 159-160; 627 NW2d 247 (2001) (the Court construes an act as a whole to harmonize its provisions and carry out the purpose of the Legislature).

This most rudimentary of all rules of statutory construction has been succinctly stated and codified in California where, in construing a statute, a judge's duty is "simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted" by the legislature. Cal Code Civ Pro § 1858. Thus, the courts may not speculate that the legislature meant something other than what it said or rewrite a statute to express an intention that did not find itself expressed in the language chosen by the legislature. *McAlexander v Siskiyou Joint Community College,* 222 Cal App 3d 768; 272 Cal Rptr 70 (1990).

[28] *Attorney General v Marx,* 203 Mich 331; 168 NW 1005 (1918), quoting Lewis's Sutherland's Construction (2d ed) §490.

[29] *Cowles v Bank West*, 476 Mich 1, 21; 719 NW2d 94 (2006), quoting *American Pipe & Constr Co v Utah*, 414 US 538, 554; 94 S Ct 756; 38 L Ed 2d 713 (1974).

mortgage, by a court sitting in equity, is not inconsistent with either the plain language or the purpose of MCL 600.5803 and is manifestly consistent with the "strict constructionist" or "textualist" judicial philosophies.

In fact, equity does have that power and the courts have historically granted such relief. In fact, the very case that Sterling Mortgage cited in the Court of Appeals notes (albeit in dictum) that an equitable extension of the period to redeem from a statutory foreclosure sale in connection with a mortgage foreclosed by advertisement *may* be granted by the Court in cases of fraud "or irregularity."[30] In *Senters v Ottawa Savings Bank FSB*,[31] for example, this Court stated that, "*[i]n the present case,* MCL 600.3240 specifies the requirements for redemption, leaving no room for equitable considerations absent fraud, accident or mistake,"[32] (emphasis added) but only after quoting *Gordon Grossman Bldg Co v Elliott.*[33]

> *Absent some unusual circumstances* or additional considerations not within the ambit of the statute, this Court must follow the clear and plain meaning of the statute.[34] (Emphasis added.)
>
> We accept *as a general rule* that the right to redeem under present statutes is a legal right and can neither be enlarged nor abridges by the courts.[35] ((Emphasis added.)

Implicitly acknowledging the existence of exceptions to general rules, however, the Court expressly stated that "*any deviation* from the literal requirements of the statute 'must be

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[30] *Schulthies v Barron*, 16 Mich App 246, 247-48; 167 NW2d 784 (1969), citing *Heimerdinger v Heimerdinger*, 299 Mich 149; 299 NW 844 (1941). See also, *Virginian Joint Stock Land Bank of Charleston v Hudson,* 266 Mich 644, 649; 254 NW 234 (1934) (control of statutory foreclosures under a court's general equitable powers" is limited to fraud or irregularity"), quoting *Moss v Keary,* 231 Mich 295; 204 NW 93 (1925).

[31] 443 Mich 45; 503 NW2d 639 (1993).

[32] *Id.* at 55.

[33] 382 Mich 596; 171 NW2d 441 (1969).

[34] *Id.* at 606.

[35] *Id.* at 603.

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addressed to the conscience of the court'" (emphasis added).[36] And the Court subsequently reiterated that proposition, stating that, "[a]lthough the right to redeem is statutory, a court may exercise its discretion in unusual circumstances such as fraud to extend the redemption period."[37]

We think that the Court's language in *Senters* and *Flynn* is significant in terms not only of what the Court said but also what it did not say. *Senters* does not say that an equitable extension of the redemption period can be granted "*only*" in cases of fraud, accident or mistake; while *Flynn* says that a court may exercise its discretion *in unusual circumstances such as* fraud to extend the redemption period.

Although no unusual circumstances such as fraud, accident or mistake was alleged in *Senters*, that is not the case in the case at bar. In fact, in their First Amended Complaint, the Tuses specifically alleged that Sterling Mortgage made certain representations to them or their agents, thereby inducing them to purchase the subject property, which they believed to be purchasing free and clear of any lien by Sterling Mortgage and they subsequently produced evidence of such representations. Furthermore, the Tuses cited several irregularities in Sterling Mortgage's conduct, including the fact that Sterling Mortgage sat on its hands for fourteen years and seven months (while — and likely because — interest continued to accrue at an outrageous rate) before proceeding with foreclosure, even though the mortgage had been in default that entire time. Whether Sterling Mortgage's delay was intentional or mistake, the delay was highly prejudicial to the Tuses, who could have ensured that the mortgage was discharged 10 years earlier when they purchased the property had they known it was in default. Likewise, whether Sterling Mortgage committed fraud in making the pertinent representations or made them by mistake is

[36] *Senters v Ottawa Savings Bank FSB,* 443 Mich at 54, quoting *Grossman Bldg Co v Elliott,* 382 Mich at 603.

[37] *Flynn v Korneffel*, 451 Mich at 207.

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immaterial. The representations were made and the Tuses relied upon them to their detriment. Consequently, the Tuses now stand to lose their property because of *Sterling Mortgage's* conduct. In these unusual circumstances, equity required an extension of time to redeem and an extension was properly granted on reasonable and just terms [*Order Granting Plaintiffs' Motion to Extend Redemption Period, October 5, 2006* (**Apx. p. 29a**)].

Harmless Error

In asserting, based upon MCL 600.3240, that the trial court erred in extending the redemption period, Sterling Mortgage missed the point, which is not whether the Tuses redeemed within six months after the sale but rather, whether the foreclosure and sale were valid in the first place. That determination is not subject to the time limits in MCL 600.3240; it is the 15-year limitation period in MCL 600.5801(4) that governs a quiet title claim and, under that statute, the action was certainly timely, having been commenced less than six months after the purported foreclosure sale.

If, as the Tuses believe, Sterling Mortgage had no valid mortgage interest in the property or, alternatively, it was (legally or equitably) barred from exercising the right to foreclose, then the foreclosure and sale were invalid and the trial court had the power to set aside the sheriff's deed. In that event, the entire redemption issue would be moot. And, carrying that analysis to its logical conclusion, if the foreclosure and sale were invalid, then "extending the redemption period" had no effect at all except to maintain the status quo. Therefore, even if the court erred in ordering such an extension, the error was harmless. But the court did not err.

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Redemption

In general, MCL 600.3240 provides the requirements for redemption, and it has been held that *the right to redeem* can "neither be enlarged nor abridged by the courts."[38] One of the many flaws in Sterling Mortgage's position is that it assumes that "timely" exercise of the right to redeem is a dispositive fact. In some cases it is. In this case it is not. The right to redeem from a foreclosure sale is not implicated where the foreclosure and sale were invalid in the first place. That is precisely what this action was about and it is precisely why the authorities Sterling Mortgage cites in support of the proposition that a court of equity may not extend the statutory redemption period except in cases of fraud, accident or mistake *do not apply* in this case.

Moreover, the proposition for which Sterling Mortgage cites those authorities does not constitute the entire analysis. This Court has also said, in other cases, that "[a]*bsent some unusual circumstances or additional considerations not within the ambit of the statute*, this Court must follow the clear and plain meaning of the statute,"[39] "[a]ny *deviation* from the literal requirements of the statute '*must be addressed to the conscience of the court,*"[40] and "[a] court may not act in equity to avoid the application of a statute.[41] This case involves unusual circumstances or additional considerations *not within the ambit of the statute* (including but not limited to the point made above, that an invalid foreclosure sale is not within the ambit of the redemption statute) and, therefore, the relief the trial court granted did not avoid the application of the statute.

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[38] *Gordon Grossman Bldg Co v Elliott,* 382 Mich 596, 603; 171 NW2d 441 (1969) (citations omitted).

[39] *Id.* (emphasis added).

[40] *Id.* (emphasis added).

[41] *Stokes v Millen Roofing Co,* 466 Mich at 671.

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Michigan law relating to non-consensual extension of the time for redemption from a mortgage foreclosure sale is sparse and what there is consistently involves circumstances in which a party has come before the court *after the redemption period has expired,* seeking in effect to *restart* the redemption period and to redeem from a valid foreclosure sale that has already become final. A Boolean search ("redeem" or "redemption" in the same sentence as "extend" or "extension") of the text of all Michigan Supreme Court and Michigan Court of Appeals opinions reported in the twentieth and twenty-first centuries led to a total of 88 cases. Winnowing out those that have no bearing on the substance of this case (*e.g.,* extension by agreement, redemption from tax sales governed by a different redemption statute, Depression-era statutory moratorium, corporate stock redemption agreements, etc.), each of the cases arising from the foreclosure of a mortgage involves an attempt, not to literally "extend" the redemption period but to *restart* a redemption period *after the statutory period had already expired.* In this case, however, the Tuses did not wait until the redemption period had expired and, to the extent that the relief sought is construed to include extension of the redemption period, it is a *true* "extension" of time. This would be analogous to the equitable tolling of a statute of limitation,[42] in that it merely had the effect of *temporarily staying the operation* of MCL 600.3240 — like pushing a "pause" button, so to speak — *pending determination of the parties' rights.* In other words, extending the redemption period did nothing more than *maintain the status quo*, so that the Tuses could pursue their rights to a judicial conclusion without having to "redeem" the

[42] See *Ward v Siano,* 272 Mich App 715, 730 NW2d 1 (2006), citing 51 Am Jur 2d, Limitation of Actions, § 174, pp. 563-564. ("Equitable or judicial tolling ordinarily applies to a specific extraordinary situation *in which it would be unfair* to allow a statute of limitations defense to prevail because of the defendant's bad faith *or other particular and unusual inequities.*" (Emphasis added.)) See also, 51 Am Jur 2d, Limitation of Actions, § 177 ("The doctrine of equitable, or judicial, tolling may be applied to toll the running of a period of limitations *in the interests of justice.*" (Emphasis added.)).

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property from a possibly invalid foreclosure sale. So here, again, the "extension of redemption period" issue is purely semantic because the same result would obtain — and would be manifestly proper — if, instead of purporting to "extend the redemption period," the trial court had called its order a "preliminary injunction" restraining Sterling Mortgage from taking any action inconsistent with the Tuses claim of title before the Court determined whether Sterling Mortgage had validly acquired (and divested the Tuses of) title.[43]

In summary, although a court "may not act in equity to avoid the application of a statute,"[44] a close reading of MCL 600.3240 reveals nothing in the statute with which the trial court's sensible — and equitable — solution is inconsistent. Therefore, under the facts of this case, the trial court's order purportedly extending the redemption period was neither erroneous nor an abuse of its discretion.

Why, one may ask, is extending the redemption period in these circumstances not inconsistent with MCL 600.3240? It is not a matter of splitting hairs to point out what the statute says and what it does not say. Specifically, it provides, in pertinent parts, that "*[a] purchaser's deed is void if the mortgagor ... redeems* the entire premises ... within the applicable time limit"[45] and, *for that purpose*, "the redemption period is 6 months."[46] MCL 600.5801, on the other hand, provides:

> *No person may bring or maintain any action* for the recovery or possession of any lands or make any entry upon any lands unless, after the claim or right to make the entry first accrued to himself or to someone through whom he claims, he commences the action or makes the entry within the periods of time prescribed by this section. (Emphasis added.)

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[43] See, *e.g., Adams v Adams,* 276 Mich App 704, 715; 742 N.W.2d 399 (2007) (courts "are not bound by a party's choice of labels because this would effectively elevate form over substance").

[44] *Stokes v Millen Roofing Co,* 466 Mich at 649.

[45] MCL 600.3240(1) (emphasis added).

[46] MCL 600.3240(8).

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Thus, unlike MCL 600.5801, MCL 600.3240 is not a statute of limitations. That is, it does not *bar* "*any action*" not brought within a specified period, it only serves to protect *the purchaser* at a foreclosure sale from being divested of title by the foreclosed party, and such protection is subject to a condition precedent, *i.e.* the non-occurrence of redemption within a specified period by a person *having a right of redemption*. In other words, MCL 600.3240 does not negate MCL 600.5801, it merely cuts off *the right of redemption* — and has no effect whatsoever *where there is no right of redemption, e.g.,* because the foreclosure was invalid and *there should not have been a sale* (or a purchaser) *to begin with*.

Finally, to put this semantic issue to rest, a request to *extend* the redemption period necessarily implies *intent to redeem* (*i.e.* if the foreclosure is determined to have been valid). This case was about setting aside the sheriff's deed, in which the Tuses succeeded, thereby vitiating any application of the statute governing redemption. But the case law clearly establishes the trial court's power to extend the redemption period, *if it has not already expired*, so that the Tuses could redeem if necessary (*i.e.* if the foreclosure was determined to be valid). In the end, that is the essence and effect of the judgment in this case and the Tuses did just that. If the trial court reached this result for the wrong reason, it nevertheless reached the right result.

MCL 600.3240 provides, in pertinent part:

> (8) Subject to subsections (9) to (11), for a mortgage executed on or after January 1, 1965, on residential property not exceeding 4 units *and not more than 3 acres in size*, if the amount claimed to be due on the mortgage at the date of the notice of foreclosure is *more than $66^2/_3$% of the original indebtedness* secured by the mortgage, the redemption period is six months. (Emphasis added.)
>
> (12) If subsections (7) to (11) do not apply, the redemption period is *1 year from the date of sale*. (Emphasis added.)

Subsections (7) to (11) do not apply here; the record is devoid of evidence that the property exceeds three acres and the amount claimed to be due on the mortgage at the date of the notice of

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foreclosure ($26,326.44) [*Joint Trial Exhibit 23, Notice of Foreclosure* (**Apx. pp. 239a and 240a**)] is *less* than $66^2/_3\%$ of the original indebtedness ($76,500.00) [*Joint Trial Exhibit 3, Mortgage* [**Apx. p. 209a**]; $26,326.44 is only 34.4% of $76,500.00. But both the notice of foreclosure and the Affidavit of Redemption [*Joint Trial Exhibit 23* (**Apx. p. 243a**)] erroneously state that the redemption period is six months. Therefore:

(a) The foreclosure sale was voidable because the notice of foreclosure was defective;[47]

(b) The sheriff's deed [*Joint Trial Exhibit 23* (**Apx. p. 238a**)] is void because the sale was void;

(c) The Tuses timely brought this action to set aside the foreclosure sale;

(d) The Tuses commenced this action not seven *weeks* before the redemption period expired but seven *months* before the redemption period expired;

(e) The trial court properly exercised its power to extend the redemption period pending adjudication of the Tuses' claim;

(f) The redemption period was extended to 30 days after entry of a final order[48] and the final order was entered on September 12, 2007;

(g) Even if the notice of foreclosure, Affidavit of Redemption, and sheriff's deed were not invalid, the extended redemption period did not expire until October 12, 2007; and

(h) The Tuses tendered full payment of the redemption amount *on September 13, 2007.*

---

[47] See, e.g., *Jackson Investment Corp v Pittsfield Products, Inc,* 162 Mich App 750, 755; 413 NW2d 99 (1987).

[48] See, *e.g., Andres v Washtenaw Circuit Judge,* 287 Mich 412, 417; 283 NW 630 (1939) (a party must obey a voidable order or move to have it set aside; *until a voidable order is set aside, the court as well as the parties are bound by it*).

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And, as noted above at p. 8, tender of the judgment amount constitutes satisfaction of the judgment — or, in this case, effective redemption of the property.

B.

Given that a quiet title action is equitable in nature and considering that nothing in MCL 600.3240 can be read as precluding such relief in appropriate circumstances — as where the foreclosing mortgagee has sat on its hands for almost 15 years, misled subsequent purchasers by affirmatively representing that its mortgage had been satisfied, and would reap a windfall as a result of its own inaction at the expense of an innocent third party if permitted to divest the third party of title to property worth more than $150,000.00 through foreclosure of a mortgage on which the original unpaid balance was less than $9,000.00 —a court sitting in equity has the power to set aside the sheriff's deed, award the mortgagee money damages equal to the unpaid balance as of the date of the sheriff's sale, and impose an equitable mortgage on the property to secure payment of the monetary award.

Having shown that the trial court did not exceed its authority by maintaining the status quo pending determination of the substantive issues, we now address the substantive issues. They are (1) *whether* equitable relief is appropriate and (2) if so, *what* relief is appropriate.

The fundamental difference between law and equity can be summarized in one sentence. "The law" is a clearly stated *rule* requiring strict or substantial compliance, whereas *equitable principles* allow a court, in its discretion, *to fashion an appropriate remedy* if and as required *when the law does not provide an adequate* remedy. Or, even more succinctly, the law is inherently rigid; equitable principles are inherently flexible and are not intended to hold a court sitting in equity to unbending rules.

Furthermore, it is a basic tenet of our system of jurisprudence-that courts have the inherent power to provide equitable remedies. "Every equitable right or interest derives not from a declaration of substantive law, but from *the broad and flexible* jurisdiction of courts of equity to

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afford remedial relief, *where justice and good conscience so dictate.*"[49] (Emphasis added.) "The purpose of equity is to do complete justice in a case where a court of law is unable, because of the inflexibility of the rules by which it is bound, *to adapt its judgment to the special circumstances of the case.*"[50] (Emphasis added.) And no less an authority than the U.S. Supreme Court observed, in one of its best known and most significant cases of the twentieth century, that "[t]raditionally, equity has been characterized by a practical flexibility in shaping its remedies."[51]

A. — Appropriateness of Granting Equitable Relief

The evidence supports the inferences that (i) absent relief, Sterling Mortgage would obtain a windfall at the Tuses' expense, which it would be inequitable to allow it to retain (see Part C., below), and (ii) the Tuses had no adequate remedy at law. Therefore, the granting of equitable relief was appropriate.

B. — Appropriateness of the Equitable Relief that Was Granted

The relief that the court chose to grant is eminently fair and equitable. Significantly, the court did not leave Sterling Mortgage high and dry or even deny it the full benefit of its contract (the Mortgage). In sum, the Judgment effectively placed *both* parties back in the condition they were in immediately before the sale — Sterling Mortgage holding a mortgage on which $27, 351.54 was owing and the Tuses having fee title that was subject to Sterling Mortgage's interest but could be freed of that interest by payment of the $27, 351.54. Thus, Sterling Mortgage has "lost" nothing to which it would have been entitled had there been no foreclosure (except a

[49] 30A CJS, Equity, In General, § 93, p. 289.

[50] 27A Am Jur 2d, Equity; Nature, Purpose, and Distinguishing Features, § 2, p. 520-521.

[51] *Brown v Board of Ed of Topeka,* 349 US 294, 300, 75 S Ct 753, 756, 99 L Ed 1083 (1955).

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windfall) and the Tuses have gained nothing. There could not be another remedy that is more fair and equitable than that.

Brydges v Emmendorfer* and *Stokes v Millen Roofing Co

In granting the Tuses leave to appeal the Court specifically directed the parties to address "the effect, if any, on this case of *Brydges v Emmendorfer,* 311 Mich 274, 279 (1945) (holding that "[t]he statute of limitations does not control the question of laches in equitable actions") and *Stokes v Millen Roofing Co,* 466 Mich 660, 671-672 (2002) (concluding that courts should not avoid the application of a statute under the guise of equity because a statutory penalty is excessively punitive or harsh)."

Brydges v Emmendorfer

The plaintiff, as trustee in bankruptcy and acting on behalf of the defendant-debtors' creditors, sued to set aside a conveyance of land that had rendered the debtor insolvent. This was an action at law under the former fraudulent conveyances statute. Although based upon statute, "this [was] a chancery case, governed by equitable considerations.[52] The defendant sought to avoid operation of the statute based upon the lapse of time from the conveyance in 1934 to the commencement of suit in 1942. There was no question that the conveyance was "fraudulent" under the statute; the sole question was whether the trustee's claim was barred by laches. The trial court rejected defendant's assertion of laches, granted the trustee's request, and set aside the conveyance.

Reviewing the case, this Court took note of the long established rule that delay alone does not constitute laches; for the doctrine to apply, "[t]he delay must have resulted in some prejudice to the party asserting laches which would make it inequitable to disregard the lapse of time and

[52] *Brydges v Emmendorfer*, 311 Mich at 279-280.

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incidental consequences."[53] In other words, "[t]here must be other circumstances than mere lapse of time that would make it inequitable to grant the relief sought."[54] Here as in *Brydges*, there is no showing from which an inference may be drawn that Sterling Mortgage has been harmed by any delay in bringing suit to quiet title and set aside the sheriff's deed.[55] To the contrary, Sterling Mortgage benefited greatly from *its own* continuing delay — and *the Tuses* were severely prejudiced by Sterling Mortgage's 15-year delay in foreclosing.

Stokes v Millen Roofing Co

Millen Roofing Company furnished labor and material in connection with improvements to the Stokeses' residence and claimed a construction lien on the property. The Stokeses sued to clear their title to the property of Millen's lien on the ground that, because Millen was not licensed as a residential builder, the lien was invalid. Millen counterclaimed for breach of contract, quantum meruit, and foreclosure of the construction lien. Both the trial court and the Court of Appeals agreed with the Stokeses that the lien was invalid due to Millen's lack of a builder's license but both courts held that Millen was entitled to recover the full amount of the contract price on equitable grounds. This Court affirmed the determination that the lien was invalid but reversed the grant of equitable relief, holding that (1) under MCL 339.2412, Millen's failure to obtain a residential builder's license constituted an absolute bar to its seeking compensation for the labor and material it furnished; (2) because Millen was unlicensed (and therefore barred from seeking compensation), its construction lien was invalid; and (3) Millen was not entitled to equitable relief because any such relief would allow equity to be used to

[53] *Id.*, quoting *Carey v Lauhoff,* 301 Mich 168, 175; 3 NW2d 67 (1942).

[54] *Id.* at 280, quoting *Kutschinski v Zank*, 307 Mich 260, 271; 11 NW2d 881 (1943).

[55] *Id.*

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defeat the statutory ban on an unlicensed contractor seeking compensation for residential construction.

Regarding the latter, the Court quoted approvingly an excerpt from the opinion of the Court of Appeals, stating "[r]egardless of how unjust the statutory penalty might seem to this Court, it is not our place to create an equitable remedy for a hardship created by an unambiguous, validly enacted, legislative decree."[56] This is echoed here, in the Court of Appeals' statement that "a court may not act in equity to avoid the application of a statute, regardless of the apparent harshness of the statutory penalty." [*Opinion of the Court of Appeals at p. 4* **(Apx. p. 338)**].

Here, however, there is no "recovery" sought, nor is there an express statutory bar to the Tuses' claim. Furthermore, unlike the statutes at issue in *Stokes,* which *bar* persons who have not complied with applicable licensing requirements (*which is a misdemeanor*[57]) from recovering compensation and claiming a construction lien, MCL 600.3240 states the procedure for *exercising* a statutory *right*. There is, therefore, no "penalty" involved here. That is, the purpose of MCL 600.3240 is not to penalize or ban the exercise of the right of redemption but rather, to ensure that the purchaser at the foreclosure sale is not prejudiced by the passage of time.

That is highly significant here because *Sterling Mortgage is the purchaser* as well as the foreclosing mortgagee and the equities weigh heavily in the Tuses' favor.

> This court has frequently relieved a person from a harsh forfeiture where he is *ready and willing to make full payment*, and where there are *very unusual circumstances* which appeal to the conscience of the court, and where *the party seeking to enforce the forfeiture will receive everything to which he would have been entitled* under his contract, had there been no forfeiture. This right to

[56] *Stokes v Millen Roofing Co,* 466 Mich at 672, quoting *Stokes v Millen Roofing Co,* 245 Mich App 44, 57-58: 627 NW2d 16 (2001).

[57] MCL 339.601(3).

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redeem, as is sought in the amended or supplemental bill of complaint, rests in the sound discretion of the court.[58]

This aptly describes the case at hand.

C.

The evidence supports the trial court's finding that Sterling Mortgage would receive a benefit at the Tuses' expense as a result of the unreasonably delayed foreclosure of its mortgage and that it would be unfair to permit Sterling Mortgage to retain the benefit.

MCL 600.3252 provides, in pertinent part, that after a sale pursuant to foreclosure by advertisement, any surplus money left in the hands of the officer or other person making a sale, after satisfying the mortgage on which the real estate was sold and payment of the costs and expenses of the foreclosure and sale, "shall be paid over ... to the mortgagor, his legal representatives or assigns ...." In this case, however, the mortgagor itself (Sterling Mortgage) was the purchaser at the foreclosure sale. Therefore, there is no third party purchaser.

Furthermore, Sterling Mortgage bid only the amount then due and owing on the Mortgage, so there was no "surplus" money from the proceeds of the sale. But if the sale had not been set aside, Sterling Mortgage would have obtained fee title to property worth almost 20 times the balance due and owing at the time of the default and more than five times the amount owing as of the date of the sale. *That windfall* is what Sterling Mortgage seeks to retain (or regain) by appealing the trial court's judgment. But that windfall would come at a price — and it is the Tuses who would pay it.

A simple balancing of the equities leaves no room to doubt that it would be grossly unfair to permit that result. The Tuses *reasonably* believed (due in no small part to Sterling Mortgage's own conduct) that the Mortgage had been paid off. On the other hand, Sterling Mortgage had sat

[58] *Gordon Grossman Bldg Co v Elliott,* 382 Mich at 604, quoting *Marble v Butler*, 249 Mich 276; 228 NW 677 (1930) (emphasis added in *Grossman*).

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on its hands for nearly 15 years — an admitted lack of diligence for which it offered no justification or excuse — *and had affirmatively represented* that the Mortgage had been paid off.

III.
The trial court improperly sanctioned the Tuses for filing a motion seeking relief to which they were clearly entitled.

SUPPLEMENTAL STATEMENT OF FACTS

Sterling Mortgage moved for summary disposition on April 9, 2007, long after the close of discovery [*Defendant Sterling's Motion for Summary Disposition* (**Apx. p. 33a**)]. The motion was based, in part, upon two affirmative defenses it had not pleaded [*8/2/07 Order Denying Plaintiffs Motion to Strike Defendant Sterling's Amended Affirmative Defenses* (**Apx. p. 202a**)]. Although the Tuses argued, in opposition to Sterling Mortgage's motion, that those issues *were not properly before the court* [*Plaintiffs' Response to Defendant Sterling's Motion for Summary Disposition filed 5/2/07, pp 7, 13* (**Apx. p. 150a**)], they had no choice but to also address the substance of those defenses in their arguments opposing Sterling Mortgage's motion.

Sterling Mortgage immediately attempted to overcome the deficiency in its pleadings by filing amended affirmative defenses including the two new defenses [*Defendant Sterling's Amended Affirmative Defenses, filed 5/4/07* (**Apx. p. 178a**)]. However, it did so without leave of court, as required by MCR 2.118(A)(2). The motion for summary disposition was heard six days later, on May 10, 2007.

The court denied Sterling Mortgage's motion for summary disposition without specifically addressing the substance of the new defenses or the effect of Sterling's unauthorized filing of amended affirmative defenses [*5/22/07 Order Granting in Part and Denying in Part Defendant Sterling's Motion for Summary Disposition* (**Apx. p. 180a**)]. More to the point, the court did not state that leave to amend had been denied (or granted, for that matter). Consequently, in order to ensure that Sterling Mortgage would not attempt to assert the new defenses again later, at trial (or to find out

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whether, in the worst case, the Tuses needed to include those issues in their preparation for trial), the Tuses were compelled to seek entry of an order disposing of that unresolved issue. Accordingly, they moved, in accordance with MCR 2.115(B), to strike Sterling Mortgage's amended affirmative defenses on the grounds that (i) they were "not drawn in conformity with the[ ] rules" and (ii) such amendment would be extremely prejudicial to them at that late stage of the litigation [*Plaintiffs Motion to Strike Defendant Sterling's Amended Affirmative Defenses dated May 4, 2007* (**Apx. pp. 182a-191a**)].

The court denied the Tuses' motion to strike on the ground that the issue presented had already been resolved by its general denial of Sterling Mortgage's motion for summary disposition [*8/2/07 Order Denying Plaintiffs' Motion to Strike Defendant Sterling's Amended Affirmative Defenses* (**Apx. p. 334a**)], even though the mere *denial of summary disposition* based upon a particular defense does not dispose of the defense or bar its assertion at trial. In that regard, the court erred as a matter of both fact and law. But, adding insult to injury, the court *sanctioned* the Tuses for having moved to strike the amended affirmative defenses, finding that the Tuses had engaged in "brinkmanship" and that the motion to strike "is beyond disingenuous and is frivolous" [*8/2/07 Order Denying Plaintiffs' Motion to Strike Defendant Sterling's Amended Affirmative Defenses* (**Apx. p. 334a**)].

ARGUMENT

Standard of Review

A trial court's decision to impose sanctions is reviewed for an abuse of discretion.[59] An "abuse of discretion" occurs when the decision results in an outcome falling outside the range of

[59] *Casey v Auto Owners Ins Co,* 273 Mich App 388, 404; 729 NW2d 277 (2006).

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principled outcomes.[60] This standard recognizes that there will be circumstances in which there will be no single correct outcome. If the trial court selects a principled outcome, there is no abuse of discretion, and the reviewing court must defer to the trial court's ruling.[61] When the trial court selects an outcome that is neither reasonable nor principled, an abuse of discretion occurs.[62]

The Tuses did not engage in sanctionable misconduct by filing a motion permitted by the court rules, for a legitimate purpose, seeking relief to which they were entitled as a matter of law, and which had not already been granted.

The findings upon which the trial court imposed sanctions are not just "clearly" erroneous, they are *painfully* erroneous. The Tuses did not engage in sanctionable misconduct by filing a motion permitted by the court rules, for a legitimate purpose, seeking relief expressly provided in the Michigan Court Rules,, and which the court erroneously concluded had already been granted. Furthermore, the motion to strike was analogous to and served the same purpose as a motion *in limine*[63] (*i.e.* limiting the evidence to that which is material to a triable issue) and, viewed in that light, it was in no way "unduly delayed" or otherwise prejudicial to Sterling Mortgage; this was nothing more and nothing less than a housekeeping matter involving the tying up of loose ends before trial. Therefore, the trial court abused its discretion by imposing a sanction upon the Tuses, whose action in filing the motion to strike was in all respects reasonable and proper.

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[60] *Barnett v Hidalgo,* 478 Mich 151, 158; 732 NW2d 472 (2007). See also, *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006); *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

[61] *Maldonado, supra.*

[62] *Id.*

[63] See, *e.g., People v Harris,* 86 Mich App 301, 309; 272 NW2d 635 (1978) (the *in limine* procedure serves a practical purpose; knowing whether the court plans to admit evidence relating to an issue allows the opponent to plan a strategy that will reduce the harmful impact of the court's error in permitting the issue itself to be raised).

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Analysis

The Tuses did not engage in sanctionable misconduct by filing a motion permitted by the court rules, for a legitimate purpose, seeking relief expressly provided in the Michigan Court Rules, and which the court erroneously concluded had already been granted. Furthermore, the motion to strike was analogous to and served the same purpose as a motion *in limine*[64] (*i.e.* limiting the evidence to that which is material to a triable issue) and, viewed in that light, it was in no way "unduly delayed" or otherwise prejudicial to Sterling Mortgage; this was nothing more and nothing less than a housekeeping matter involving the tying up of loose ends before trial. Therefore, the trial court abused its discretion by imposing a sanction upon the Tuses, whose action in filing the motion to strike was in all respects reasonable and proper.

The Court of Appeals declined to even address the issue presented on cross appeal on the ground that "the Tuses have failed to provide citation to authority to support their position." **(Apx. p. 40)** The support for the Tuses' position lies in the standard of review itself: the imposition of sanctions for having filed a motion that we believed (and still believe) was entirely proper and necessary, and seeking relief to which we believed (and still believe) the Tuses were entitled (*i.e.* to limit the scope of the issues to be tried) *is not a principled outcome.*

What the Court of Appeals appears to have overlooked is the total absence of support *for* the imposition of sanctions. The pertinent order makes a vague assertion that "[t]he actions in this case *border on* gamesmanship" **(Apx. p.203)a)**, which evidently encompasses the Tuses but does not exclude Sterling Mortgage. But the order does not identify a single *fact* (as opposed to misapprehension) that so much as hints at any improper purpose or other sanctionable conduct

[64] *Id.* (the *in limine* procedure serves a practical purpose; knowing whether the court plans to admit evidence relating to an issue allows the opponent to plan a strategy that will reduce the harmful impact of the court's error in permitting the issue itself to be raised).

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on the Tuses' part. The Tuses' motion clearly was not a veiled motion for reconsideration because, contrary to the court's perception, the issue presented *had not been decided at all*, let alone in Sterling Mortgage's favor (*denial* of a motion for *summary disposition* on a defense does not make the defense "go away," it only means that the defendant will have to proffer admissible evidence at trial).

That leaves only the court's assertion that:

> The fact that Plaintiff [sic] even considers arguing that the delay [in asserting new affirmative defenses] is prejudicial (after having the opportunity to brief and argue the issues and waiting three months to make this argument on the eve of trial) is beyond disingenuous and is frivolous. [*August 2, 2007 Order Denying Plaintiffs' Motion to Strike Defendant Sterling Mortgages Amended Affirmative Defenses, p. 2* (**Apx. p. 203a**)]

What is wrong with this picture? Everything. Least of all, in terms of significance, is that it was two months, not three, after entry of the order denying Sterling Mortgage's motion for summary disposition that the Tuses moved to strike. Second, the Tuses did not have an "opportunity" to address the merits of the new defenses, they were *compelled* to do so by the very fact that Sterling Mortgage asserted them as grounds for summary disposition. Next, the Tuses argued *in their response to Sterling Mortgage's motion for summary disposition* that the new defenses were improper. Therefore, it cannot fairly be said that they waited three (or even two) months to make that argument and the motion to strike was, as we said earlier, merely a housekeeping matter, a tying up of loose ends. Finally, it was neither disingenuous nor frivolous to argue that *the Tuses* were prejudiced *by Sterling Mortgage's late assertion of new defenses* because the new defenses were not asserted until after the close of discovery (discovery closed March 30, 2007 [*scheduling order, 11/30/06* (**Apx. p. 31a**)]; Sterling Mortgage filed its motion for summary disposition on April 9, 2007 and Sterling Mortgage filed the amended affirmative defenses on May 4, 2007 — only after the Tuses objected to having been "sandbagged" in a

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motion for summary disposition). The Tuses were indeed prejudiced by the prospect of having to try issues on which they had been deprived of an opportunity to conduct discovery.

On the other hand, the record shows (*and Sterling Mortgage's attorney has conceded*) that Sterling Mortgage improperly filed the amended affirmative defenses without either obtaining the Tuses' concurrence or seeking leave of the court. The record further shows that the court never granted Sterling Mortgage leave to amend its affirmative defenses — or conclusively disposed of the new defenses in such a way that Sterling Mortgage would be barred from raising them at trial.

In short, the Tuses showed that *there is nothing in the record to support* the imposition of sanctions and Sterling Mortgage offered nothing to refute that fact. Therefore, the trial court clearly erred in finding sanctionable conduct. Consequently, we must ask this Court, can a party *really* be sanctioned for unidentified "actions" that may *appear* to "*border on*" gamesmanship but in fact do not rise to that level, without any basis for a finding that the party actually overstepped that boundary or acted improperly? We think not — despite the lack of a reported decision saying so that we could cite to the Court of Appeals. And we think it is, in the most literal sense, an unprincipled outcome. Therefore, the imposition of sanctions was unquestionably an abuse of discretion, an abuse of judicial power, and an abuse of the Tuses, who were the *victims* of admitted misconduct on Sterling Mortgage's part. It necessarily follows that that the Court of Appeals erred in affirming the order for sanctions.

CONCLUSIONS

A. The trial court did not commit a reversible error by entering an order which, notwithstanding its inexact taxonomy, had the intended effect of maintaining the status quo pending determination of the parties' respective rights, title and interest in the Property.

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B. The trial court did not clearly err in its determination that Sterling Mortgage would be "unjustly enriched" (*i.e.* that it would unfairly obtain a windfall at the Tuses' expense) if the sheriff's deed were not set aside).

C. The trial court did not err in granting the Tuses equitable relief, as the equities weigh heavily in their favor and they have no adequate remedy at law.

D. The Judgment is eminently fair and equitable as it leaves both parties in the same position they would have been in had the foreclosure and sale not occurred.

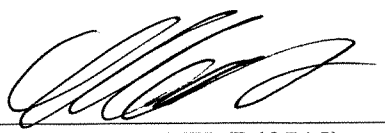
E. The trial court abused its discretion by imposing sanctions on the Tuses for having filed a motion permitted by the court rules, for a legitimate purpose, seeking relief expressly provided for in the Michigan Court Rules, and which had not already been granted.

RELIEF REQUESTED

For the foregoing reasons, the Court should affirm the Judgment of the trial court and reverse the August 2, 2007 order denying the Tuses' motion to strike and imposing sanctions on the Tuses. In addition, the Court should remand this matter to the trial court for entry of an order (i) declaring that the Judgment has been satisfied, the Mortgage has been discharged and the lien created by the Judgment has been discharged; and (ii) directing Sterling Mortgage to disgorge and return to the Tuses the $1,000.00 sanction improperly imposed by the trial court.

Respectfully submitted,

MADDIN, HAUSER, WARTELL,
ROTH & HELLER, P.C.



By: MARK H. FINK (P43715)
Attorneys for Plaintiffs-Appellants
28400 Northwestern Highway, Third Floor
Southfield, MI 48034
(248) 354-4030

Dated: July 1, 2010

LAW OFFICES MADDIN, HAUSER, WARTELL, ROTH & HELLER, P.C.