

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

VIRGINIA TILLMAN BAILEY, a/k/a
VIRGINIA TILLMAN,

Plaintiff,

vs.

Case No. 13-11136-CHB

HON. CHRISTOPHER P. YATES

MERCANTILE CORPORATION, a/k/a
MERCANTILE BANK OF WEST
MICHIGAN; MERCANTILE BANK
MORTGAGE COMPANY, LLC;
PEGGY CURRY; and SOUTH DIVISION
PROPERTIES, LLC,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION FOR
SUMMARY DISPOSITION UNDER MCR 2.116(C)(8)

On July 17, 2014, the Court awarded summary disposition in favor of Defendants Mercantile Corporation, a/k/a Mercantile Bank of West Michigan, and Mercantile Bank Mortgage Company, LLC (collectively "Mercantile") on most of the claims asserted by Plaintiff Virginia Tillman Bailey ("Ms. Tillman"), but the Court afforded Ms. Tillman the opportunity to amend her complaint for the purpose of properly pleading several potentially viable claims. On August 6, 2014, Ms. Tillman filed a "Second Amended Verified Complaint." On August 28, 2014, Mercantile filed a motion seeking summary disposition under MCR 2.116(C)(8) on all three counts in Ms. Tillman's second amended complaint. Accordingly, the Court must review the second amended complaint to decide whether Ms. Tillman's most recent version of her claims can withstand scrutiny. The Court concludes that Mercantile is entitled to summary disposition under MCR 2.116(C)(8) on each of the claims.

“A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint.” State ex rel Gurganus v CVS Caremark Corp, 496 Mich 45, 62 (2014). The motion “is properly granted if ‘[t]he opposing party has failed to state a claim on which relief can be granted.’” Id. at 62-63. In reviewing such a motion, the Court “considers only the pleadings” and “must accept all factual allegations in the complaint as true, along with all reasonable inferences or conclusions that can be drawn from them.” Id. at 63. “However, conclusory statements that are unsupported by allegations of fact on which they may be based will not suffice to state a cause of action.” Id. Thus, the Court must assess each of Ms. Tillman’s claims by considering only her complaint.

In 1976, Ms. Tillman purchased a house located at 735 Worden, S.E., in Grand Rapids. See Second Amended Verified Complaint, ¶ 7. In 2004, Ms. Tillman entered into a lending agreement with Defendant Mercantile that resulted in a mortgage on her house. See id., ¶ 11. After that, Ms. Tillman purportedly signed a “Modification of Mortgage” on April 13, 2005, see id., Exhibit A, but Ms. Tillman contends that someone forged her signature on that document. See id., ¶ 17. But the document leaves no doubt that Mercantile registered the “Modification of Mortgage” with the Kent County Clerk before the end of April 2005. See id., Exhibit A.

Three years later, in April 2008, Defendant Mercantile foreclosed on Ms. Tillman’s house based, in part, on the “Modification of Mortgage.” See Second Amended Verified Complaint, ¶ 21. In the wake of that foreclosure, a business owned by Ms. Tillman’s son purchased the house from Mercantile on July 14, 2008. See id., ¶¶ 28-29 & Exhibit C (quit claim deed). The business signed a mortgage with Mercantile and, in turn, sold the house to Ms. Tillman on a land contract. See id., ¶ 31. Ultimately, the business defaulted on its obligations, so Mercantile once again foreclosed on the property, leaving Ms. Tillman without her house.

Count One of the second amended complaint demands that a mutual release be set aside. Ms. Tillman states that “she was never presented with a mutual release by Defendant [Mercantile] and that she does not recall signing said release[.]”¹ see Second Amended Verified Complaint, ¶ 39, so the mutual release must “be set aside because it was obtained by way of fraud.” See id., ¶ 44. As an initial matter, Ms. Tillman has failed to plead fraud with sufficient particularity. See Gurganus, 496 Mich at 63. Indeed, Ms. Tillman has not even provided a copy of the mutual release as part of her second amended complaint, even though Mercantile attached that document to a brief supporting its earlier summary-disposition motion. See Defendants’ Brief in Support of Motion for Summary Disposition, Exhibit D (June 19, 2014). The three-page mutual release dated October 10, 2008, that bears Ms. Tillman’s signature excused her from all deficiency balances in exchange for Mercantile’s sales of Ms. Tillman’s house at 735 Worden, S.E., and another property.² See id. The mutual release constitutes a settlement agreement that is “binding until rescinded for cause.” Stefanac v Cranbrook Educational Community, 435 Mich 155, 163 (1990). Quite simply, the second amended complaint offers nothing amounting to cause that justifies setting aside the mutual release, so the Court must grant summary disposition under MCR 2.116(C)(8) to Mercantile on Count One.

Count Two of the second amended complaint accuses Defendant Mercantile of unlawfully foreclosing against her property and asserts that the foreclosure “should be rescinded.” See Second

¹ Paragraph 38 of the second amended complaint alleges that Defendant Mercantile, acting in concert with Ms. Tillman’s son’s company, “convinced [Ms. Tillman] that the only way to save the property was to purchase the above-described property from South Division and sign a mutual release.” See Second Amended Verified Complaint, ¶ 38. Therefore, Ms. Tillman’s own allegations demonstrate that she knew about a mutual release.

² Ms. Tillman was potentially responsible for a deficiency balance of hundreds of thousands of dollars, but Defendant Mercantile agreed not to pursue that obligation. If the Court sets aside the mutual release, Ms. Tillman would be subject to liability for such a deficiency balance.

Amended Verified Complaint, ¶ 51. Under Michigan law, “statutory foreclosures will only be set aside if ‘very good reasons’ exist for doing so.” Kubicki v MERS, 292 Mich App 287, 289 (2011). Indeed, “‘it would require a strong case of fraud or irregularity, or some peculiar exigency, to warrant setting a foreclosure sale aside.’” See Sweet Air Investment, Inc v Kenney, 275 Mich App 492, 497 (2007). And after the expiration of the redemption period, a mortgagor such as Ms. Tillman retains no interest in the foreclosed property. See Bryan v JPMorgan Chase Bank, 304 Mich App 708, 713-715 (2014). By seeking to rescind the 2008 foreclosure long after the redemption period expired, Ms. Tillman is attempting to upset a transaction several links down the chain of title. Michigan law simply does not allow her to attack the loan or mortgage underlying the foreclosure at this late date. See Reid v Rylander, 270 Mich 263, 267 (1935). Thus, the Court must award summary disposition under MCR 2.116(C)(8) to Mercantile on the unlawful-foreclosure claim in Count Two.

The most frustrating claim involves Ms. Tillman’s allegation of racial discrimination, largely because Ms. Tillman still has not identified a legal basis for that claim despite repeated suggestions from the Court. Most recently, Ms. Tillman’s counsel has elected to rely upon “the common law” even though no such claim existed at common law. See Pompey v General Motors Corp, 385 Mich 537, 552 (1971). Moreover, the Court has referred Ms. Tillman’s counsel to the Court’s opinion in the lawsuit brought by her son’s companies against Defendant Mercantile for racial discrimination. The Court’s decision in that action, which is readily available on the Specialized Business Docket’s website at accesskent.com, see Tillman Industrial Properties, LLC v Mercantile Bank Mortgage Co, No 13-08428 (June 2, 2014), includes a detailed analysis of which claims might be viable. In spite of the Court’s best efforts, the racial-discrimination claim in the second amended complaint states no cognizable legal theory. Because the second amended complaint amounts to the third failed effort

by Ms. Tillman to plead a claim for racial discrimination, the Court must reluctantly conclude that Ms. Tillman cannot state any viable claim. Consequently, the Court must grant summary disposition under MCR 2.116(C)(8) to Mercantile on the racial-discrimination claim in Count Three, thereby bringing this entire case to its conclusion.³

IT IS SO ORDERED.

This is a final order that resolves the last pending claim and closes the case.⁴

Dated: November 4, 2014



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

³ The Court readily acknowledges its obligation under MCR 2.116(I)(5) to permit a plaintiff to amend a complaint in the wake of a summary-disposition ruling under MCR 2.116(C)(8) unless such an amendment “would be futile.” See Ormsby v Capital Welding, Inc., 471 Mich 45, 52-53 (2004). Here, the Court already afforded that opportunity to Ms. Tillman when the Court granted summary disposition with respect to the claims set forth in her first amended complaint. See Order Regarding Mercantile Corporation and Mercantile Bank Mortgage Company’s Motion for Summary Disposition at 6 (July 17, 2014).

⁴ Because of the Court’s ruling in favor of Defendant Mercantile on its most recent motion for summary disposition, the Court need not address Mercantile’s motion for reconsideration with respect to the Court’s order issued on July 17, 2014.