

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

HUNTINGTON NATIONAL BANK,

Plaintiff,

vs.

Case No. 13-02541-CZB

HON. CHRISTOPHER P. YATES

PVV, LLC, a Michigan limited liability company; PLAINFIELD LUMBER COMPANY, a Michigan corporation; PIETER VAN VLIET TRUST DATED JANUARY 5, 1998, AMENDED APRIL 21, 2003, AND OCTOBER 5, 2006; MICHAEL J. FISCHER, an individual; PIETER VAN VLIET, an individual; and LEO VAN VLIET, an individual,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION

Plaintiff Huntington National Bank (“Huntington”) filed this action against the defendants on March 20, 2013, to collect on debts owed by the business commonly known as Plainfield Lumber. At the behest of Plaintiff Huntington, the Court entered an Order Appointing Receiver on April 10, 2013. The receiver then proceeded to sell a majority of the business assets and listed the real property for sale, but the receiver has not yet found a buyer for the real property, so Huntington now requests summary disposition pursuant to MCR 2.116(C)(10) on each count in its complaint, including its claim for judicial foreclosure.

The defendants do not contest their liability as to any claim except judicial foreclosure. The defendants contend that, by requesting the appointment of a receiver, Huntington is precluded from seeking the remedy of foreclosure pursuant to the election-of-remedies doctrine. This doctrine “is a

‘procedural rule which precludes one to whom there are available two inconsistent remedies from pursuing both.’” Barclae v Zarb, 300 Mich App 455, 486 (2013). “The purpose of the doctrine ‘is not to prevent recourse to alternate remedies, but to prevent double redress for a single injury.’” Id. Thus, a plaintiff may “simultaneously pursue all available remedies regardless of their legal consistency, if the plaintiff does not obtain a double recovery.” Id. Here, the Court previously granted Huntington’s request to appoint a receiver, but the receiver was unsuccessful in finding a buyer for the properties, so Huntington now seeks judicial foreclosure. Michigan courts often appoint a receiver and then later order the foreclosure of the property, see e.g., Flagstar Bank FSB v Estate Properties, Inc, No 289301, slip op at 2 (Mich App April 20, 2010) (unpublished decision), and the Court finds that granting these two remedies in this case will not yield a double recovery for Plaintiff Huntington. Thus, the election-of-remedies doctrine does not preclude Huntington from seeking judicial foreclosure.

Next, although the defendants do not contest liability, they challenge Huntington’s calculation of damages. The Court, however, need not decide the proper measure of damages at this point. The Court may grant relief under MCR 2.116(C)(10) when, “[e]xcept as to the amount of damages, there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law.” See MCR 2.116(C)(10). Thus, the Court may grant relief as to liability alone and set this matter for trial or an evidentiary hearing to determine the proper measure of damages. Here, the parties have not requested a jury trial, so the Court will conduct an evidentiary hearing on March 20, 2014, at 9:00 a.m. to determine the proper amount of damages that Huntington may recover.

IT IS SO ORDERED.

Dated: January 30, 2014


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