

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

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

Plaintiff,

Case No. 13-11136-CHB

vs.

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 REGARDING MERCANTILE CORPORATION AND MERCANTILE
BANK MORTGAGE COMPANY'S MOTION FOR SUMMARY DISPOSITION

Despite various efforts to keep Virginia Tillman Bailey (“Ms. Tillman”) in her life-long home, she ultimately was evicted so that Defendants Mercantile Corporation, a/k/a Mercantile Bank of West Michigan and Mercantile Bank Mortgage Company (collectively “Mercantile”) could take possession of the house at 735 Worden, S.E., in Grand Rapids. But Ms. Tillman has not given up the fight. She has initiated this action against Mercantile, Peggy Curry, and South Division Properties, LLC (“South Division Properties”) seeking monetary damages and an injunctive order staying Mercantile’s eviction proceedings. The request for injunctive relief is moot, however, because the 61st District Court has already entered an order granting Mercantile the right to possession of the Worden property. Also, on April 3, 2014, the Court dismissed the claims against Peggy Curry and South Division Properties for want of personal service. As a result, all that remains are several claims against Mercantile, which has moved for summary disposition pursuant to MCR 2.116(C)(7) and (8) on each of those claims.

I. Factual Background

Defendant Mercantile has moved for summary disposition under MCR 2.116(C)(7) and (8). “When reviewing a motion brought under MCR 2.116(C)(8), the Court considers only the pleadings.” See Michigan ex rel Gurganus v CVS Caremark Corp, No 146791, slip op at 15 (Mich June 11, 2014) (for publication). In contrast, “[a] party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence[,]” Maiden v Rozwood, 461 Mich 109, 119 (1999), but “[t]he contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant.” Id. Here, Mercantile submitted a paper trail that provides support for the allegations contained in the complaint, so the Court will primarily look to those documents to explain the factual background of this dispute.

In 2004, Ms. Tillman executed a future-advance mortgage with a maximum principal amount of \$200,000 in favor of Defendant Mercantile, which was secured by her residential property located at 735 Worden, S.E., in Grand Rapids. See Defendants’ Brief in Support of Motion for Summary Disposition, Exhibit A (Mortgage). Then, on April 13, 2005, Ms. Tillman entered into a modification of the mortgage that raised the maximum principal amount to \$600,000, id., Exhibit B (Modification of Mortgage), but Ms. Tillman alleges that her former employee, Peggy Curry, forged her signature on that document. See Amended Complaint, ¶ 17. In any case, Ms. Tillman defaulted on the underlying promissory note in 2008, so Mercantile initiated foreclosure proceedings. Mercantile purchased the Worden property at a sheriff’s sale on April 9, 2008, subject to a six-month redemption period. See Defendants’ Brief in Support of Motion for Summary Disposition, Exhibit C (Sheriff’s Deed on Mortgage Sale). Ms. Tillman was unable to redeem her property within the six-month period, but her son, Roosevelt Tillman, negotiated a deal with Mercantile on October 10, 2008, to keep Ms. Tillman in her home. Under the terms of that deal, Defendant South Division Properties – a company owned

by Roosevelt Tillman – bought the Worden property and Mercantile agreed to release all of its claims against Ms. Tillman. See id., Exhibit D (Mutual Release Agreement). Unfortunately, South Division Properties later defaulted on its obligations to Mercantile, which initiated a second foreclosure on the Worden property in 2012. On July 25, 2012, Mercantile once again purchased the Worden property at a sheriff's sale, see id., Exhibit E, and neither South Division Properties nor Ms. Tillman was able to redeem the property. The 61st District Court has since confirmed Mercantile's right to possession of the Worden property. See id., Exhibit F (Order and Judgment of Possession).

In her latest effort to seek relief, Ms. Tillman filed a nine-count complaint against Defendants Mercantile, South Division Properties, and Peggy Curry on November 25, 2013, alleging, *inter alia*, that Mercantile wrongfully foreclosed on the Worden property because the mortgage modification was obtained by a forgery. See Amended Complaint, ¶ 17. The Court dismissed Defendants South Division Properties and Peggy Curry on April 3, 2014, for lack of personal service, see Dismissal for Non-Service, and Defendant Mercantile now seeks summary disposition under MCR 2.116(C)(7) and (8) on the remaining claims.

II. Legal Analysis

Defendant Mercantile contends that the claims against it must be dismissed pursuant to MCR 2.116(C)(7) and (8). When reviewing a motion under MCR 2.116(C)(7), the Court must consider all of the documentary evidence submitted by the parties, see Maiden, 461 Mich at 119, and “[i]f there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide.” See RDM Holdings, LTD v Continental Plastics Co, 281 Mich App 678, 687 (2008). “When reviewing a motion brought under MCR 2.116(C)(8), the Court considers only the pleadings[,]” see Gurganus, No 146791, slip op at 15, and “summary disposition is properly granted if “[t]he opposing party has failed to state a claim on which relief can be granted.””

Id. Applying these standards, the Court must dismiss Counts One, Two, Three, Five, and Nine of Ms. Tillman’s amended complaint, but afford Ms. Tillman leave to amend Counts Five and Nine.

The Court must grant summary disposition under MCR 2.116(C)(7) on Counts One, Two, and Three because all of those claims are barred by the applicable statutes of limitations. Count One sets forth a claim for fraud and forgery, while Count Two presents a claim for fraud and misrepresentation. Each of those counts hinges upon the purported forgery of the mortgage modification by Defendant Curry. The statute of limitations for fraud claims is six years, see Boyle v General Motors Corp, 468 Mich 226, 232 (2003); MCL 600.5813, and the fraudulent-concealment statute is inapplicable to fraud claims. Boyle, 468 Mich at 231; MCL 600.5855.¹ Therefore, a fraud claim “accrues when the wrong is done[.]” Boyle, 468 Mich at 231. Here, the alleged forgery of the mortgage modification occurred on April 13, 2005, see Defendants’ Brief in Support of Motion for Summary Disposition, Exhibit B (Mortgage Modification), yet Ms. Tillman did not file suit until November 25, 2013, so Counts One and Two are barred by the six-year statute of limitations. Count Three asserts a slander-of-title claim. Ms. Tillman insists that Mercantile committed slander of title in filing the allegedly forged mortgage modification with the Kent County Register of Deeds on April 20, 2005. But a claim for slander of title is subject to a one-year statute of limitations, see Bonner v Chicago Title Ins Co, 194 Mich App 462, 471 (1992), so the one-year statute of limitations bars that claim. In sum, Mercantile is entitled to summary disposition on Counts One, Two, and Three under MCR 2.116(C)(7).

The Court cannot resolve Count Six under MCR 2.116(C)(7). Defendant Mercantile contends that the claim for unlawful foreclosure in that count is subject to the five-year statute of limitations set forth in MCL 600.5801(1), which states: “When the defendant claims title to the land in question by

¹ Even if the fraudulent-concealment statute applied to fraud claims, Defendant Mercantile did not attempt to conceal the mortgage modification, but instead filed the mortgage modification with the Kent County Register of Deeds on April 20, 2005. This filing precludes reliance upon the fraudulent-concealment statute. Trentadue v Buckler Automatic Lawn Sprinkler Co, 479 Mich 378, 391 (2007).

or through some deed made upon the sale of the premises . . . by a sheriff upon a mortgage foreclosure sale the period of limitation is 5 years.” See MCL 600.5801(1). Ms. Tillman does not claim title to the Worden property by or through the sheriff’s sale. Instead, she contends that the sheriff’s sale itself was unlawful. Thus, her claim is not subject to MCL 600.5801(1), see Day Living Trust v Kelley, No 309531, slip op at 10-11 (Mich App June 6, 2013) (unpublished decision), so the Court cannot grant Mercantile’s request for summary disposition on Count Six pursuant to MCR 2.116(C)(7).²

Finally, the Court must award summary disposition to Defendant Mercantile on Counts Five and Nine pursuant to MCR 2.116(C)(8), but in doing so, it must afford Ms. Tillman the opportunity to amend her complaint. See MCR 2.116(I)(5). In Count Five, Ms. Tillman asks the Court to set aside the mutual release of October 10, 2008. “It is a well-settled principle of Michigan law that settlement agreements are binding until rescinded for cause.” See Stefanac v Cranbrook Ed Comm, 435 Mich 155, 163 (1990). Consequently, a release agreement may be rescinded only if “(1) the releasor was acting under distress, (2) there was misrepresentation as to the nature of the release agreement, or (3) there was fraudulent or overreaching conduct to secure the release.” See Brooks v Holmes, 163 Mich App 143, 145 (1987). Ms. Tillman alleges that Mercantile induced her to sign the mutual release under false pretenses, see Amended Complaint, ¶ 68, but she does not particularly plead the facts that support her allegations of fraud. Thus, Ms. Tillman has not met the heightened pleading standard for alleging fraudulent activity. See Gurganus, No 146791, slip op at 16. Ms. Tillman has likewise failed to state a claim for discrimination in Count Nine of the amended complaint. A plaintiff must set forth “specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend[.]” See MCR 2.111(B)(1). “[C]onclusory statements that are

² Defendant Mercantile also argues that Ms. Tillman’s claim for unlawful foreclosure is barred by the parties’ mutual release, but the Court cannot grant relief on that basis because Ms. Tillman has requested rescission of the mutual release.

unsupported by allegations of fact on which they may be based will not suffice to state a cause of action.” Gurganus, No 146791, slip op at 16. Ms. Tillman has accused Mercantile of discriminating against her because she is an African American, but she has failed to plead specific facts in support of this conclusion. As a result, Ms. Tillman has not reasonably informed Mercantile of the legal basis for her discrimination claim. Therefore, the Court must dismiss Counts Five and Nine pursuant to MCR 2.116(C)(8), but it must also grant Ms. Tillman leave to amend those claims. See MCR 2.116(I)(5).

III. Conclusion

For the reasons set forth in this opinion, the Court must grant summary disposition in favor of Defendant Mercantile on Counts One, Two, and Three under MCR 2.116(C)(7) because those claims are barred by the applicable statutes of limitations. The Court must also grant summary disposition in favor of Mercantile on Counts Five and Nine pursuant to MCR 2.116(C)(8), but the Court must afford Ms. Tillman leave to amend her complaint to more adequately plead those two claims. She shall have leave to file a new amended claim within three weeks of the entry of this order.

IT IS SO ORDERED.

Dated: July 17, 2014



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