

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 16, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP1829

Cir. Ct. No. 2005CV821

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**SECRETARY OF VETERANS AFFAIRS,
AN OFFICER OF THE UNITED STATES OF AMERICA,**

PLAINTIFF-RESPONDENT,

v.

ISAAC SAWYER,

DEFENDANT-APPELLANT,

**DELORES MAE SAWYER,
STATE OF WISCONSIN AND
STATE FARM FIRE & CASUALTY COMPANY,**

DEFENDANTS.

APPEAL from a judgment of the circuit court for Milwaukee County: FRANCIS T. WASIELEWSKI, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Isaac Sawyer appeals from a foreclosure judgment. We conclude that there is no genuine issue of material fact to preclude the summary judgment of foreclosure by the Secretary of Veterans Affairs (The Secretary) against Sawyer's homestead property.¹ Therefore, we affirm.

¶2 Sawyer purchased the property, and executed and delivered a note and mortgage to the Secretary in the principal amount of \$66,000. In November of 1994, Sawyer sought protection under Chapter Thirteen of the United States Bankruptcy Code. In December of 1999, the Secretary obtained relief from the automatic stay incident to the bankruptcy proceeding. In February of 2000, Sawyer again sought Chapter Thirteen relief. In February of 2003, Sawyer's bankruptcy petition was dismissed.

¶3 On January 27, 2005, the Secretary commenced a foreclosure action on its mortgage to Sawyer, alleging that he owed the Secretary \$61,515.22 in principal, plus interest from September 1, 2001. Sawyer filed an answer, asserting ten affirmative defenses, denied the amount alleged owing, denied that there were no other proceedings for the recovery of the sums allegedly secured by the note and mortgage, and denied that "all conditions precedent to the commencement of this action [we]re satisfied." In most of his remaining allegations, he demanded proof because he claimed to lack information to adequately respond. Sawyer also filed a counterclaim, alleging that the foreclosure action was frivolous, and that the Secretary inadequately complied with applicable debt collection laws and procedures prior to commencing the action. Sawyer also seeks dismissal, costs,

¹ Insofar as Isaac Sawyer's wife or former wife, Delores Mae, or any of their spouses claim any interest in the property, we refer to all of these interests collectively as "Sawyer."

fees and other equitable relief. The Secretary replied to the counterclaim. Sawyer served requests for production of documents, essentially to establish an itemized account of what the Secretary claimed Sawyer owed.

¶4 The Secretary moved for summary judgment. The trial court denied the motion without prejudice and the parties conducted discovery; specifically, the Secretary deposed Sawyer. About five weeks after Sawyer's deposition, the Secretary renewed the summary judgment motion. Sawyer objected in writing and the parties orally argued the motion. The trial court recounted

the saga of Mr. Sawyer ... and this property[, which] goes back to 20 years if you listen to [the Secretary's counsel], 12 years if you listen to Mr. Sawyer. Either way the case has a lot of moss on it. It has been before a lot of courts. There have been a lot of attempt[s] to foreclose here. [The trial court is] satisfied that there are ground[s] here for entry of summary judgment in favor of the plaintiff and against Isaac ... Sawyer and the Court is going to order that summary judgment be entered.

The trial court granted the Secretary summary judgment of foreclosure against Sawyer's mortgaged property. Sawyer appeals.

¶5

We review summary judgment decisions *de novo*, applying the same standards employed by the [trial] court. We first examine the complaint to determine whether it states a claim, and then we review the answer to determine whether it joins an issue of material fact or law. If we determine that the complaint and answer are sufficient to join issue, we examine the moving party's affidavits to determine whether they establish a *prima facie* case for summary judgment. If the movant has carried his initial burden, we then look to the opposing party's affidavits to determine whether any material facts are in dispute that entitle the opposing party to a trial.

Schurmann v. Neau, 2001 WI App 4, ¶6, 240 Wis. 2d 719, 624 N.W.2d 157 (citation omitted).

¶6 The Secretary set forth the basic elements of the foreclosure claim against Sawyer. Attached to the summary judgment motion are affidavits and exhibits showing the note and mortgage, payments made, interest accrued, advances for taxes and insurance, late charges, inspection and other incident costs and fees. At Sawyer's deposition, opposing counsel asked Sawyer for proof of the payments he claimed he had made. Counsel told Sawyer of his continuing obligation to supplement the deposition by providing these documents insofar as Sawyer was unable to produce these purported documents at his deposition. Sawyer did not do so. Sawyer was given ample time and opportunity to demonstrate that he had made payments contrary to the Secretary's proof. He objected, but ultimately his objections, defenses and denials were inapplicable to this foreclosure action.²

¶7 Sawyer also claims that the Secretary failed to comply with numerous conditions required by Wisconsin's Consumer Act, WIS. STAT. chs. 421-427 (2005-06), such as his right to notice to cure any deficiencies.³ Wisconsin's Consumer Act applies only to particular consumer credit transactions in which the amount financed does not exceed \$25,000. See WIS. STAT.

² For example, Sawyer claimed that he had written various entities to assist him in determining which payments he had made, but they failed to respond, allegedly violating fair debt collection practices. Failing to respond to Sawyer's correspondence is not a valid defense to a summary judgment motion, particularly when most of the recipients of his correspondence were not even parties to this action.

³ All references to the Wisconsin Statutes are to the 2005-06 version.

§ 421.202(6). This \$66,000 mortgage for real property is not governed by the Wisconsin Consumer Act. *See* § 421.202(6), (7).

¶8 There was no point to this foreclosure action proceeding to trial. The Secretary filed proof of the loan of \$66,000 in principal to Sawyer and Sawyer's signed note and mortgage in return. The Secretary produced records showing that Sawyer had missed numerous payments. The terms of the mortgage provided that, "[u]pon a default in the payment of any indebtedness ... the whole of said principal sum and all the accrued interest thereon shall thereupon at the option of the said Mortgagee and without notice to said Mortgagor (notice being hereby waived) become and be forthwith due and payable...." Sawyer had no valid defense; he produced no proof of payments to contradict the Secretary's claim. He acknowledged that he was unable to pay what he characterized as the "ridiculous[]" amount of money claimed to be due from him. He could not legitimately dispute that amount either. Consequently, the trial court granted the Secretary summary judgment of foreclosure. In doing so, the trial court explained to Sawyer:

Because this is homestead property, Isaac Sawyer and Delores Sawyer have a six month period of redemption as provide[d] by law. Also if this property does go to a sheriff's sale, that sheriff's sale is without any right of deficiency. In other words, there is no right of deficiency over by the V[eterans] A[ffairs] against the Sawyers for any shortfall in the sheriff's sale, so it is subject to those rights that this judgment is granted.

¶9 There are no genuine issues of material fact. Granting summary judgment on this record was appropriate.

¶10 Sawyer raises sixteen issues, most of which are addressed in our ruling on the propriety of summary judgment. He also contends that the Secretary

misled the trial court that there was no earlier attempt to foreclose on this mortgage. The trial court was aware of the previously pending suit that had been dismissed (to Sawyer's benefit).⁴ We are unclear on what the trial court was misled about, or how it had any consequential effect on this foreclosure judgment. Sawyer also claims that the trial court was biased against him. Sawyer's examples of claimed trial court bias disprove his point. Sawyer claims that the trial court "forced [a court] date though I had a court appearance 200 miles away from Milwaukee. Judge was biased in the fact that he place[d] me under undue stress to return to his court for the 2:00P hearing." The following is the exchange to which Sawyer refers:

MR. SAWYER: I would have to verify that, Your Honor. I don't feel comfortable with the weather conditions and road conditions on that particular date trying to get to Sauk County.

MADAM CLERK: That is literally the only day otherwise we are out to January.

THE COURT: If you get hung up in Sauk County and there is a blizzard going on, on the 19th, and I don't rule that out as a possibility because I know the weather here can get dicey at this time of the year Mr. Sawyer, but I would make allowances for that. Let's keep this on. If you get stuck because of bad roads and you are out – I know where Sauk County is. That is a good distance from here. We have interstate all the way out there.

MR. SAWYER: Can your clerk verify the time off of Sauk's computer on CCAP?

THE COURT: She needs a case number in order today to do that.

⁴ As the trial court stated, "[this case] has been before a lot of courts. There have been a lot of attempt[s] to foreclose here."

MR. SAWYER: I don't have it with me, Your Honor. I have court that date. I don't want to commit to something that I know I can't do.

THE COURT: Two o'clock I think would give you, all things being equal, that would give you enough time to return here from Sauk County. If, as I say, if the weather is a problem, I will I would take that into account. We will set this over then until 2 p.m. on Monday, December the 19th, this courtroom.

We see no evidence of bias.

¶11 Sawyer objects to the trial court's entry of a summary judgment of foreclosure against him. He claims that the Secretary did not conduct himself fairly, and that the trial court did not treat him fairly. We disagree. The Secretary moved for summary judgment on its foreclosure action. It proved Sawyer's missed payments, and its entitlement to foreclose. Sawyer, although given ample time and opportunity to defend, did not do so. There were no genuine issues of material fact; summary judgment was appropriate. Sawyer still had a six-month period of redemption, and no deficiency judgment could be taken against him. He lost his case; he has not shown improper conduct by the Secretary or bias by the trial court.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

