

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 3, 2002**

Cornelia G. Clark  
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. 00-3262**

**Cir. Ct. No. 00-CV-31**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT  
AUTHORITY,**

**PLAINTIFF-RESPONDENT,**

**v.**

**ROBERT W. STANEK AND JOSYANNE STANEK,**

**DEFENDANTS-APPELLANTS.**

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APPEAL from a judgment of the circuit court for St. Croix County:  
C.A. RICHARDS, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Robert and Josyanne Stanek, pro se, appeal a summary judgment of foreclosure granted in favor of the Wisconsin Housing and Economic Development Authority (WHEDA). The Staneks argue that the trial court erred by granting WHEDA's motion for a summary judgment of foreclosure.

Specifically, the Staneks contend that the trial court miscalculated the amount due for the mortgage principal and interest and erred by allowing WHEDA to accelerate the debt. The Staneks additionally allege trial court bias and claim that they were denied due process. We reject these arguments and affirm the judgment.

### I. BACKGROUND

¶2 In May 1993, the Staneks borrowed \$56,905 from First National Bank of New Richmond, executing a purchase money mortgage to secure the loan. The mortgage was eventually assigned to WHEDA, and in September 1999 the Stanek's account became delinquent. On September 2, WHEDA sent the Staneks a notice of default and right to cure letter by certified mail. The letter was later returned as unclaimed. On September 29, WHEDA again sent the Staneks a notice of default and right to cure letter, notifying them that the failure to cure the delinquency within seventy-two hours would result in the commencement of foreclosure proceedings.

¶3 Because the Staneks failed to timely cure the delinquency, WHEDA accelerated the loan consistent with the terms of the mortgage.<sup>1</sup> On October 7, the

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<sup>1</sup> The mortgage provided, in relevant part:

(continued)

Staneks contacted WHEDA to discuss their account. The Staneks were advised that if they did not bring their account current by October 12, foreclosure proceedings would be commenced and legal fees and costs would begin to accrue. Because the Staneks failed to make a payment by October 12, the account was referred to legal counsel with instructions to commence foreclosure proceedings.

¶4 On October 14, WHEDA received a check from the Staneks that would have brought the account current were it not for the legal fees incurred by referring the case to counsel to commence foreclosure proceedings. The Staneks were informed that the payment would be applied to the account if the Staneks: (1) remitted a check by October 31 for the \$250 that had accrued in legal fees; and (2) made a timely November payment. The Staneks failed to remit the check for legal fees and on November 29, paid only the November payment and late charge. Because the Staneks failed to remit the \$250 legal fees, WHEDA returned the November payment as insufficient. As the loan had already been accelerated,

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[U]pon Mortgagor's breach of any covenant or agreement of Mortgagor in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall mail notice to Mortgagor ... specifying: (1) the breach; (2) the action required to cure the breach; (3) a date, not less than 30 days from the date the notice is mailed to Mortgagor, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. The notice shall further inform Mortgagor of the right to assert in the foreclosure proceeding the non-existence of a default of any other defense of Mortgagor to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law.

WHEDA filed the foreclosure action on January 24, 2000. Because the Staneks failed to timely file an answer, WHEDA moved for default judgment. Despite their failure to timely file an answer, the Staneks objected to WHEDA's motion for default judgment. WHEDA therefore decided to proceed as though the case was contested. The trial court granted WHEDA's subsequent motion for a summary judgment of foreclosure and this appeal followed.

## II. ANALYSIS

¶5 This court reviews summary judgment decisions independently, applying the same standards as the trial court. *Smith v. Dodgeville Mut. Ins. Co.*, 212 Wis. 2d 226, 232, 568 N.W.2d 31 (Ct. App. 1997). Summary judgment is granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987).

### A. Mortgage Principal and Interest

¶6 The Staneks contend that the trial court miscalculated the amount due for the mortgage principal and interest. The judgment required the Staneks to pay "\$52,649.50 together with interest from October 1, 1999." The Staneks argue that this amount does not reflect that their account was paid through October. They are mistaken. WHEDA's affidavit in support of default judgment provided that "the defendants in this action are the current owners and have defaulted under the terms of the note and mortgage by failing to make the monthly installment payments due on and after the first day of November, 1999."

¶7 WHEDA concedes that the account was paid through October and explains that the account is due for interest from October 1 because interest is paid

one month in arrears. Thus, because the account was paid through October, the October payment included interest for September. We therefore conclude that the trial court properly determined that while the account principal was due from November 1, 1999, the interest on the account was actually due from October 1, 1999.

¶8 With respect to the mortgage interest, the Staneks claim that because they attempted to make mortgage payments for November 1999 through August 2000, it was improper to calculate the interest from October 1, 1999. We are not persuaded. Because the Staneks failed to timely cure their delinquent account, WHEDA accelerated the debt pursuant to its option under the terms of the mortgage. Although WHEDA conditionally accepted the Staneks' October payment, all other mortgage payments attempted subsequent to the debt's acceleration were returned to the Staneks. WHEDA was entitled to collect interest pursuant to the note.<sup>2</sup> Once the debt was accelerated, the only payment WHEDA

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<sup>2</sup> Under the terms of the note, interest is to be computed for the month in which the loan "evidenced hereby is originated for the actual number of days principal is unpaid on the basis of a 360-day year." The note further provides that "[t]hereafter, interest is to be computed for the number of days principal is unpaid on the basis of a 360-day year, counting each day as 1/30<sup>th</sup> of a month and disregarding differences in length of months and years." The note additionally states:

If any monthly installment under this Note is not paid when due and remains unpaid after a date specified by a notice to Borrower, the entire principal amount outstanding and accrued interest thereon, shall at once become due and payable at the option of the Note holder. The date specified shall not be less than thirty days from the date such notice is mailed. The Note holder may exercise this option to accelerate during any default by Borrower regardless of any prior forbearance. If suit is brought to collect this Note, the Note holder shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to, reasonable attorney's fees.

was obligated to accept was a total payoff of the entire balance due under the note. Because the total debt had not been paid by the Staneks, the interest properly accrued consistent with the terms of the note.

#### B. Acceleration

¶9 The Staneks argue that the trial court erred by allowing WHEDA to accelerate the debt. A mortgage is treated and construed as a contract. *Mutual Fed. S&L Ass'n. v. Wisconsin Wire Works*, 58 Wis. 2d 99, 104-05, 110-11, 205 N.W.2d 762 (1973). Here, the mortgage provided WHEDA the option of acceleration in the event of breach, subject to specific notice requirements. WHEDA complied with the notice requirements and specifically informed the Staneks that “[a]ny partial payment made may be retained and applied to your account, but will not cure the default.” Because the Staneks failed to timely cure the default as delineated by the notice of default and right to cure letter, we conclude that the trial court did not err by allowing WHEDA to exercise its option to accelerate the debt.

#### C. Bias

¶10 The Staneks claim that the trial court was unfairly biased in favor of WHEDA and its attorneys. The record contains no indication that the trial court treated the Staneks unfairly in any way. Rather, the record indicates that the trial court suggested that the Staneks obtain legal counsel and ultimately provided the Staneks the opportunity to defend their case despite their failure to file a timely answer. Instead of bias, the record reflects abundant trial court tolerance for the Staneks’ decision to defend their case pro se.

¶11 The Staneks additionally argue that “the burden of proof was unfairly biased” in favor of WHEDA. Specifically, the Staneks suggest that because summary judgment was granted in favor of WHEDA, the trial court must have ignored the evidence they introduced to refute WHEDA’s claims. The trial court found that all material allegations of WHEDA’s complaint were proven true. The court ultimately determined, based on both sides’ arguments, that there were no genuine issues of any material fact, thus entitling WHEDA to the summary judgment of foreclosure. We discern no error.

#### D. Due Process

¶12 The Staneks argue that they were denied due process because the trial court prematurely ended hearings and otherwise ignored their “affidavits of superior knowledge” and counterclaim alleging a “defect in foreclosure.” The record reveals that the case had been before the trial court on four separate occasions. The trial court heard the parties’ positions and confirmed that it considered the various documents filed by the Staneks in granting the summary judgment of foreclosure. With regard to the Staneks’ counterclaim, the trial court properly dismissed the counterclaim as untimely filed.<sup>3</sup> The Staneks have failed to show that they were denied due process.

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<sup>3</sup> Although WHEDA filed the present foreclosure action on January 24, 2000, the Staneks’ counter-claim was not filed until August 17, 2000. Pursuant to WIS. STAT. § 802.06:

[A] defendant shall serve an answer within 45 days after the service of the complaint upon the defendant. ... A party served with a pleading stating a cross-claim against the party shall serve an answer thereto within 45 days after the service upon the party. The plaintiff shall serve a reply to a counterclaim in the answer within 45 days after service of the answer.

*By the Court.*—Judgment affirmed.

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



