STATE OF MICHIGAN

COURT OF APPEALS

ROBERT L. BOWEN and GENEVA L. BOWEN, Plaintiffs-Appellants, v ROY BRADLEY and TAMMY BRADLEY, Defendants-Appellees.	UNPUBLISHED May 21, 2009 No. 285052 Saginaw Circuit Court LC No. 06-062821-CH

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition. We reverse and remand for further proceedings consistent with this opinion. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The following facts are not in dispute. Defendants were buying real estate from plaintiffs on a land contract. Defendants were required to make monthly payments, including interest, and to pay the property taxes. By the time plaintiffs filed their complaint in November 2006, defendants had never paid the property taxes and had been in default on the contract since May 15, 2005. The complaint alleged four counts: foreclosure, breach of contract, ejectment, and eviction. In paragraph 10, the complaint alleged that the total amount due as of September 2006 was $40,934.40, consisting of the entire remaining principal, interest, and unpaid property taxes. The remedies sought included foreclosure, immediate possession, costs and fees, and "other and further relief." After the complaint was filed, defendants tendered partial payments in an attempt to bring the account current. Plaintiffs held the payments in escrow.

Defendants moved for summary disposition, asserting that plaintiffs had not exercised their option to accelerate and that defendants had cured by paying enough to make the account current. They stated that acceleration "requires a formal act," citing *Sindlinger v Paul*, 428 Mich 161; 404 NW2d 212 (1987), and *Kent v Pipia*, 185 Mich App 599; 462 NW2d 800 (1990), for this principle. Plaintiffs argued that the contract included an acceleration clause and that the complaint was sufficient to provide notice that they were exercising the clause. No money was tendered within 45 days of being past due, so the option was exercised by filing the complaint and at that point defendants could only tender the entire amount owing to avoid foreclosure. The trial court agreed that the contract included an acceleration clause, but found that plaintiffs had taken no action to exercise the acceleration option. The trial court found that unlike the complaint in *Dumas v Helm*, 15 Mich App 148; 166 NW2d 306 (1968), plaintiffs' complaint did

not include an express request to accelerate the unpaid balance, and that because the option had not been exercised, defendants only had to make the payments current and not pay the accelerated indebtedness.

We find the trial court erred in concluding that the complaint itself was insufficient to exercise the option to accelerate. The cases cited by defendant do not require a *separate* act. In *Sindlinger, supra* at 163, our Supreme Court expressly stated:

We agree with the Court of Appeals that the vendors were not required to provide the vendees "with notice or to allow them a period of time in which to bring their payments current" before exercising the option to accelerate, that *no particular form or type of notice is prescribed for exercising the right to accelerate,* and that *commencement of an action for foreclosure would evidence the vendors' desire to exercise, and constitute an exercise of, the right and option to accelerate*. [Emphasis added.]

The trial court in this case focused on the language in *Dumas*, where this Court noted, "In paragraph 9 of their complaint filed in this cause, plaintiffs exercised their option under paragraph 3g of the contract, declaring the entire unpaid balance due and payable forthwith." *Dumas, supra* at 150. The trial court found that plaintiffs' complaint lacked such a request to accelerate the unpaid balance. However, *Sindlinger* does not require an express declaration. Moreover, paragraph 10 of the complaint states, "The total amount due and owing as of September 15, 2006, is $40,934.40," which reflects the accelerated debt. The language used by plaintiffs, "total amount due and owing" is nearly identical to "entire unpaid balance due and payable forthwith." *Dumas* does not indicate that the plaintiffs in that case made any more express request for acceleration.

Plaintiffs' complaint was sufficient under *Dumas* and *Sindlinger* to invoke the acceleration clause. Because plaintiffs accelerated before defendants attempted to cure the default, foreclosure is appropriate unless defendants tender the entire amount owed under the acceleration clause.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot
/s/ Douglas B. Shapiro