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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1533**

Plaza Holdings, LLC,
Appellant,

vs.

Jeffrey J. Wirth, as trustee
FBO Plymouth Family Trust, et al.,
Respondents.

**Filed May 7, 2018
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-CV-17-2951

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Considered and decided by Kirk, Presiding Judge; Hooten, Judge; and Stauber,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges the district court's judgment dismissing its claims, arguing that the district court erred by concluding that appellant lacked standing to challenge respondents' redemption of a property after a sheriff's sale. Appellant contends that it has standing to assert its claims because (1) it became a "creditor," as defined by Minn. Stat. § 513.44(a) (2016), after acquiring the sheriff's certificate of sale to the property, (2) it suffered an injury-in-fact, and (3) the sheriff's certificate of sale provided it a vested ownership interest allowing it to contest any other party's interest in the property. We affirm.

FACTS

Plymouth Family Trust (PFT) owned property (the Property) in Plymouth, Minnesota. On June 1, 1999, respondent Jeffrey Wirth, the trustee of PFT, executed a mortgage on the Property in favor of the Housing and Redevelopment Authority of St. Paul. The Housing and Redevelopment Authority of St. Paul then assigned the mortgage to respondent Southern Financial Trust Corporation (SFTC) on August 12, 2016. Jeffrey Wirth's sister, respondent Cherise Wirth, is the president and sole shareholder of SFTC.

In September 2016, SFTC initiated a foreclosure of the Property's mortgage. On November 8, 2016, appellant Plaza Holdings, LLC successfully submitted a bid on the Property for \$130,000 at a sheriff's sale. As a result, Plaza Holdings received a sheriff's certificate of sale for the Property subject to a redemption period under Minn. Stat. §§ 580.19, .23, subd. 1(a) (2016).

During the redemption period, Jeffrey Wirth executed a trustee's deed transferring the trust's interest in the Property from PFT to respondent Western Development & Construction Company (WDCC), allegedly for \$425,000.¹ Cherise Wirth is the president and sole shareholder of WDCC. WDCC redeemed the Property from foreclosure, annulling the sale of the Property to Plaza Holdings. WDCC paid Plaza Holdings \$132,251.95 to redeem.

Plaza Holdings filed a complaint against Jeffrey Wirth, SFTC, WDCC, and Cherise Wirth (collectively, respondents), alleging that PFT's transfer of title to WDCC is void for violating the Minnesota Uniform Voidable Transactions Act (MUVTA).² Plaza Holdings also sought declaratory judgments declaring that PFT's transfer to WDCC and WDCC's subsequent redemption of the Property are void. Respondents moved to dismiss the complaint, arguing, among several theories, that Plaza Holdings did not experience any damages and therefore lacked standing to pursue this action.

The district court held a motion hearing and later issued an order granting respondents' motion to dismiss the complaint for lack of standing. The district court reasoned that the sheriff's certificate did not guarantee ownership of the Property because it was subject to the right of redemption, and Plaza Holdings did not suffer an injury after

¹ Plaza Holdings questions whether WDCC actually paid "valid consideration" for the Property.

² Minn. Stat. §§ 513.41 to .51 (2016) were formerly named as the Minnesota Fraudulent Transfer Act (MUFTA) and have since been amended and renamed the Minnesota Uniform Voidable Transactions Act. Minn. Stat. § 513.51.

WDCC executed its redemption rights and paid Plaza Holdings. Judgment was entered dismissing Plaza Holding's complaint with prejudice. This appeal follows.

DECISION

Plaza Holdings argues that the district court erred by dismissing its complaint for lack of standing. The district court may grant a motion to dismiss a complaint if it “fail[s] to state a claim upon which relief can be granted.” Minn. R. Civ. P. 12.02(e). “A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, *consistent with the pleader's theory*, to grant the relief demanded.” *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014) (emphasis added). We review a district court's ruling on a motion to dismiss de novo while considering the facts alleged in the complaint as true and construing all reasonable inferences in favor of the nonmoving party. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008).

Plaza Holdings asserts that it has demonstrated standing to maintain its action because (1) Minn. Stat. § 513.44(a) confers standing to it as a creditor of PFT, (2) it suffered an injury-in-fact, and (3) it has a vested ownership interest in the Property which gives it the right to challenge another party's competing interest. “Standing is a legal requirement that a party have a sufficient stake in a justiciable controversy to seek relief from a court.” *Enright v. Lehmann*, 735 N.W.2d 326, 329 (Minn. 2007). To show that a sufficient stake exists, the plaintiff seeking relief must show that it “has suffered some ‘injury-in-fact’” or “is the beneficiary of some legislative enactment granting standing.” *Id.* Standing presents a jurisdictional issue that we review de novo. *In re Custody of D.T.R.*, 796 N.W.2d 509,

512 (Minn. 2011). The district court’s decision regarding standing “must not be based on the substantive merits or prospective success of a claim.” *Schiff v. Griffin*, 639 N.W.2d 56, 61 (Minn. App. 2002).

In this case, Plaza Holdings received the sheriff’s certificate of sale after purchasing the Property for \$130,000 at a sheriff’s sale. The sheriff’s certificate triggered a statutorily-required six-month redemption period during which “the mortgagor, the mortgagor’s personal representatives or assigns” may redeem the property by paying the sum plus interest for which the property was sold. See Minn. Stat. § 580.23, subd. 1(a). The district court determined that when WDCC exercised its assigned right of redemption on the Property, it remitted Plaza Holdings \$132,251.95—the purchase price of the sheriff’s sale plus interests and costs.³

A. Standing Conferred by Statute

Plaza Holdings contends that Minn. Stat. § 513.44(a) confers standing for its claim that WDCC’s redemption is void because Plaza Holdings became a creditor of PFT after it acquired the sheriff’s certificate to the Property. The statute provides:

A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor’s claim arose

³ Plaza Holdings asserts on appeal that it never “accepted” the payment but instead refused to cash WDCC’s check. But Plaza Holdings never alleged in the complaint that it did not accept this payment. Rather, the complaint explicitly states, “On or about January 18, 2017, [WDCC] paid [Plaza Holdings] \$132,251.95 to redeem the Property from foreclosure.” Regardless of whether Plaza Holdings accepted the payment, the allegations in the complaint indicate that WDCC acted to satisfy its assigned statutory right to redeem its interest in the Property. See Minn. Stat. § 580.23, subd. 1(a); see also *Bradley v. Bradley*, 554 N.W.2d 761, 764 (Minn. App. 1996) (“A party may redeem its interest in property lost through foreclosure sale by reimbursing all of the repurchaser’s acquisition costs.”), review denied (Minn. Dec. 23, 1996).

before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- (1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
- (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - (i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - (ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

Minn. Stat. § 513.44(a). By its terms and language, the statute only applies in the context of a creditor-debtor relationship. A “creditor” is a “person that has a claim,” with claim meaning “a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” Minn. Stat. § 513.41(3), (4) (2016). A “debtor,” on the other hand, is “a person that is liable on a claim.” *Id.*, (6) (2016).

Plaza Holdings asserts that it is a creditor of PFT because the only way PFT could have maintained its interest in the Property was by redeeming the Property through payment to Plaza Holdings. The purpose of MUVTA may be construed as “to prevent debtors from placing property that is otherwise available for the payment of their debts out of the reach of their creditors.” *See Reilly v. Antonello*, 852 N.W.2d 694, 699 (Minn. App.

2014) (quotation omitted).⁴ Though not defined in the statute, liability in this context suggests that the debtor must have a “financial or pecuniary obligation” to the creditor. See *Black’s Law Dictionary* 1053 (10th ed. 2014). Because PFT, and later WDCC, had the *option* to exercise its right to redeem, Plaza Holdings could not compel WDCC, much less any of the other respondents, to satisfy the payment for the sheriff’s certificate. Therefore, Plaza Holdings does not have a claim as defined by the statute because it does not have a right to payment. Because we conclude that a creditor-debtor relationship does not exist, Plaza Holdings fails to articulate a statutory claim under Minn. Stat. § 513.44(a) that would confer standing to bring this action.

B. Injury-in-Fact Analysis

Plaza Holdings also argues that it sustained an injury-in-fact because it did not receive title to the Property and thereby lost the benefit of its bargain. “To demonstrate an injury-in-fact, the plaintiff must show a concrete and particularized invasion of a legally protected interest.” *D.T.R.*, 796 N.W.2d at 512–13 (quotation omitted). An injury-in-fact consists of harm that is “concrete and actual or imminent, not conjectural or hypothetical.” *Hanson v. Woolston*, 701 N.W.2d 257, 262 (Minn. App. 2005), *review denied* (Minn. Oct. 18, 2005) (quotation omitted); see also *Byrd v. Indep. Sch. Dist. No. 194*, 495 N.W.2d 226, 231 (Minn. App. 1993), *review denied* (Minn. Apr. 20, 1993). Here, the district court

⁴ This court in *Reilly* interpreted MUFTA instead of the newer MUVTA. *Id.* But because the language of Minn. Stat. § 513.44(a) (2014) is nearly identical to the present version of the statute, the reasoning in *Reilly* is relevant to this issue.

determined that WDCC's payment to Plaza Holdings made Plaza Holdings whole and therefore it did not suffer an injury-in-fact.

Plaza Holdings argues that the district court erred by analyzing the injury-in-fact issue by using the out-of-pocket-loss rule instead of the benefit-of-the-bargain rule. We disagree. In cases regarding transactions that give rise to misrepresentation or fraudulent actions, Minnesota courts generally measure a plaintiff's damages by their out-of-pocket loss. *B.F. Goodrich Co. v. Mesabi Tire Co., Inc.*, 430 N.W.2d 180, 182 (Minn. 1988). Stated otherwise, "the damages are the difference between the actual value of the property received and the price paid for the property." *Id.* The rule may best apply in circumstances in which a false representation leads to a sale of real property. See *Berg v. Xerxes-Southdale Office Bldg. Co.*, 290 N.W.2d 612, 615 (Minn. 1980) (explaining that Minnesota courts follow out-of-pocket rule and that plaintiff does not suffer damages if property is worth what he gave for it). The benefit-of-the-bargain rule, however, would permit "the plaintiff to recover the difference between the value of the property received and the value to plaintiff that the property would have had if the representation had been true." *B.F. Goodrich Co.*, 430 N.W.2d at 182. But, Minnesota courts do not follow the benefit-of-the-bargain rule because it typically requires the plaintiff to rely on hypothetical and speculative proof. *Id.*

Plaza Holdings asserts that it suffered the loss of its bargain when WDCC exercised the redemption because Cherise Wirth could sell the Property for a "significant profit" that rightfully belongs to Plaza Holdings. But this assertion regarding lost profits is speculative and cannot constitute an injury-in-fact. See *Byrd*, 495 N.W.2d at 231 (explaining that

standing requires more than speculation); *see also Lassen v. First Bank Eden Prairie*, 514 N.W.2d 831, 839 (Minn. App. 1994) (“Speculative, remote, or conjectural damages are not recoverable at law.” (citation omitted)), *review denied* (Minn. Jun. 29, 1994).

The crux of Plaza Holdings’ complaint is that respondents’ fraudulent wrongdoing unlawfully displaced its interest in the Property.⁵ Minnesota courts “prefer the out-of-pocket rule where it is not a question of what the plaintiff might have gained through the transaction but what he lost by reason of defendant’s deception.” *B.F. Goodrich*, 430 N.W.2d at 182 (quotation omitted).⁶ While the allegations that respondents created sham entities to eventually redeem the Property are admittedly troubling, WDCC redeemed the Property and paid Plaza Holdings the full purchase price for the bid at the sheriff’s sale, along with accrued interest, in accordance with Minn. Stat. § 580.23, subd. 1(a). To the extent that we can evaluate the injury-in-fact inquiry through assessing Plaza Holdings’ incurred damages, we conclude that Plaza Holdings does not have standing on the basis of suffering an injury-in-fact.

⁵ Plaza Holdings also contends that it suffered an injury-in-fact because each piece of real property is unique and not fungible. While we agree with Plaza Holdings to the extent that real property is unique, we note that Plaza Holdings provides no relevant authority to support its argument that this alone provides it with standing.

⁶ Plaza Holdings relies heavily on an unpublished decision from this court to argue that the out-of-pocket rule is inappropriate in cases regarding real property. *See Flatten v. Mattson*, No. A06-1711, 2007 WL 2177896 (Minn. App. July 31, 2007). Its reliance is misplaced. First, unpublished decisions from this court lack precedential value. Minn. Stat. § 480A.08, subd. 3 (2016). Second, this court in *Flatten* determined that the appropriate measure of damages was “the difference in value between what was given and what was received,” which actually is the application of the out-of-pocket rule to fraud-induced purchases. *Flatten* 2007 WL 2177896, at *4 (citing *Lobe Enters. v. Dotsen*, 360 N.W.2d 371, 372 (Minn. App. 1985)).

C. Vested Property Interest

Finally, Plaza Holdings argues that it has standing based on having a vested interest in the Property and therefore the right to challenge any other competing interest. We again disagree. “Every sheriff’s certificate of sale made under a power to sell contained in a mortgage shall be . . . prima facie evidence of title in fee thereunder in the purchaser at such sale, the purchaser’s heirs or assigns, *after the time for redemption therefrom has expired.*” Minn. Stat. § 580.19 (emphasis added). In other words, “The purchaser of a sheriff’s certificate acquires a vested ownership interest in the property, *subject to divestment* arising from the exercise of any redemption rights held by the foreclosed owner.” *Fed. Home Loan Mortg. Corp. v. Mitchell*, 862 N.W.2d 67, 70 (Minn. App. 2015) (emphasis added) (citation omitted), *review denied* (Minn. June 30, 2015).

Despite its attempt to challenge the divestment of its interest, Plaza Holdings fails to demonstrate that it has standing to state a claim for which it may seek relief after another party lawfully exercises its statutory right to redemption. The redemption statute is clear that a mortgagor has the right to redeem its property from foreclosure and may assign this redemption right to another entity. Minn. Stat. § 580.23, subd. 1(a). Here, PFT had the statutory right to assign its ownership interest, which includes its right to redeem the Property, to another entity such as WDCC. And as the assignee, WDCC possessed the statutory right to redeem the Property by reimbursing Plaza Holdings as the holder of the sheriff’s certificate. *See id.*; *Bradley*, 554 N.W.2d at 764. Unlike in *Mitchell*, in which the respondent had prima facie evidence of title and the legal capacity to bring an eviction action, Plaza Holdings held an interest that was lawfully divested and fails to set forth a

cause of action which demonstrates that it retains the ability to challenge competing interests. *See Mitchell*, 862 N.W.2d at 71.

For these reasons, we conclude that the district court did not err by dismissing Plaza Holdings' complaint.

Affirmed.