

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1634**

Bruce Westman,
Appellant,

vs.

Specialized Loan Servicing, LLC, et al.,
Respondents.

**Filed August 5, 2024
Reversed and remanded
Smith, Tracy M., Judge**

Isanti County District Court
File No. 30-CV-22-580

Jonathan L. R. Drewes, Drewes Law, PLLC, Minneapolis, Minnesota (for appellant)

Benjamin J. Court, Sarah R. Almquist, Stinson LLP, Minneapolis, Minnesota (for respondents)

Considered and decided by Smith, Tracy M., Presiding Judge; Frisch, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant brought this action against respondents, the holder of the second mortgage on appellant's residential real property and the current servicer of appellant's mortgage loan, seeking (1) to quiet title under Minnesota Statutes section 559.01 (2022) and (2) relief under the Minnesota Residential Mortgage Originator and Servicer Licensing

Act (MOSLA), Minnesota Statutes sections 58.01 to 58.23 (2022 & Supp. 2023).¹ Appellant's claims are based on his allegation that respondents violated state statutes prohibiting usurious interest rates on loans. The district court granted summary judgment for respondents, determining that (1) the quiet-title claim is time-barred and (2) the MOSLA claim fails because appellant cannot establish that he was injured by the allegedly usurious interest rate. On appeal, appellant challenges both decisions. Because we conclude that appellant's quiet-title claim is not time-barred and that appellant has alleged an injury sufficient to support a claim under MOSLA, we reverse and remand for further proceedings.

FACTS

The following facts are undisputed. On May 12, 2006, appellant Bruce Westman signed a promissory note secured by a second mortgage on his residential property, pursuant to which General Mortgage Home Equity Corp. (General Mortgage) lent Westman \$96,000 at an annual interest rate of 12.45%. Under the note, Westman agreed to make monthly payments of \$1,020.84 beginning on July 1, 2006, through June 1, 2021, with a balloon payment for the remaining balance due on June 1, 2021. Westman further agreed to the following provision in the note:

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then:

¹ We cite the most recent version of MOSLA because it has not been amended in relevant part. *See* 2023 Minn. Laws ch. 57, art. 3, §§ 63-66, at 47-50; *see also Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case").

(a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

The last payment that Westman made was on April 1, 2008.

In 2019, General Mortgage assigned the mortgage to respondent Gulf Harbour Investments Corporation (Gulf Harbour). As of May 3, 2022, the balance due on the note was \$263,712.08. On May 10, 2022, Gulf Harbour's mortgage servicer, respondent Specialized Loan Servicing, LLC (SLS), sent Westman a "Notice of Default and Notice of Intent to Foreclose," demanding payment of \$172,521.96 by June 12, 2022.

In September 2022, Westman sued SLS and Gulf Harbour to quiet title and additionally brought a claim against SLS under MOSLA. In his quiet-title claim, Westman sought a declaration, under Minnesota Statutes section 559.01, that the note and mortgage are void under Minnesota Statutes section 334.03 (2022), with reference to Minnesota Statutes section 47.20 (2022), because the interest rate on the note is usurious. In his MOSLA claim, Westman sought the same declaratory relief as well as damages, costs, and attorney fees from SLS.

After Westman brought suit, a March 16, 2023 payoff statement showed that the amount of principal, interest, and fees due under the note was \$234,767.83. This statement calculated the payoff at a reduced interest rate of 10.371%. In his complaint, Westman had alleged that the maximum interest rate allowed was 10.371%.

Westman moved for summary judgment, and respondents cross-moved for judgment on the pleadings or for summary judgment. The district court denied Westman's motion for summary judgment and granted summary judgment to respondents, dismissing Westman's claims with prejudice. As to the quiet-title claim, the district court determined that Westman's claim is barred by the two-year statutes of limitations in Minnesota Statutes sections 334.02 and 541.07(2) (2022) because Westman made no payments on the note within two years of commencing this action. The district court alternatively determined that, even if the two-year statutes of limitations did not apply, the claim is barred by the six-year statute of limitations in Minnesota Statutes section 541.05, subdivision 1(2) (2022). As to the MOSLA claim, the district court determined that Westman could not prove that he was injured by the allegedly usurious interest rate as necessary to recover under MOSLA.

Westman appeals.

DECISION

Appellate courts "review the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). The parties do not argue that there are genuine issues of material fact. The question that they present is whether the district court erred in applying the law.

Westman asserts that the district court erred because (1) no statute of limitations bars his claim for relief under section 559.01 seeking a declaration that the note and

mortgage are void and (2) he was injured by SLS's notice of default and notice of intent to foreclose on the mortgage. We address each argument in turn.

I. The district court erred by granting summary judgment to respondents on Westman's claim for relief under section 559.01 on the ground that the claim is time-barred.

Westman's quiet-title claim seeking a declaration that the note and mortgage are void is founded on his assertion that the interest rate in the note is usurious. Section 47.20 establishes the criteria for determining the maximum interest rate that a lender is legally allowed to charge for a conventional residential loan. Minn. Stat. § 47.20, subd. 4a(a). Section 47.20 further provides that "[a]ny conventional loan having an interest rate or loan yield in excess of the maximum lawful interest rate provided for in subdivision 4a shall be usurious and subject to the same penalties as a loan made in violation of section 334.01." *Id.*, subd. 13.

The remedies for violations of Minnesota Statutes section 334.01 (2022) are provided by sections 334.02 and 334.03. *Barton v. Moore*, 558 N.W.2d 746, 750 (Minn. 1997). Section 334.02, which provides a cause of action to recover any interest paid on a usurious loan, states:

Every person who for any such loan or forbearance shall have paid or delivered any greater sum or value than in section 334.01 allowed to be received may, personally or through personal representatives, recover in an action against the person who shall have received the same, or the receiver's personal representatives, the full amount of interest or premium so paid, with costs, if action is brought within two years after such payment or delivery.

Section 334.03 provides that all usurious “notes, mortgages, and all other contracts and securities . . . shall be void except as to a holder in due course.” In other words, “a usurious transaction is void,” absent the holder-in-due-course exception. *Phalen Park State Bank v. Reeves*, 251 N.W.2d 135, 139 (Minn. 1977). “If the mortgage is usurious, it is void, and the [lender] has no right to either the interest accrued or the principal.” *Id.* But see *Rathbun v. W. T. Grant Co.*, 219 N.W.2d 641, 653 (Minn. 1974) (stating that “the recovery of both interest and principal provides a remedy too harsh under the circumstances”); *Katz & Lange, Ltd. v. Beugen*, 356 N.W.2d 733, 735 (Minn. App. 1984) (citing this aspect of *Rathbun*).

Westman argues that his quiet-title claim is not time-barred because “[a] claim brought pursuant to Minn. Stat. § 559.01 to determine current rights of parties claiming current adverse interests in real estate cannot be barred by a statute of limitations.” Section 559.01 provides:

Any person in possession of real property personally or through the person’s tenant, or any other person having or claiming title to vacant or unoccupied real property, may bring an action against another who claims an estate or interest therein, or a lien thereon, adverse to the person bringing the action, for the purpose of determining such adverse claim and the rights of the parties, respectively.

The quiet-title statute contains no statute of limitations, and respondents have not directed us to, and we are not aware of, any caselaw that determines that a statute of limitations specifically applies to claims under section 559.01.

Respondents argue, though, that Westman’s quiet-title claim is barred either by the two-year statutes of limitations in sections 334.02 and 541.07(2) or by the six-year statute

of limitations in section 541.05, subdivision 1(2). Respondents' argument for application of one of these statutes of limitations relies on the Minnesota Supreme Court's decision in *Weavewood, Inc. v. S & P Home Investments, LLC*, 821 N.W.2d 576 (Minn. 2012).

In *Weavewood*, after foreclosure proceedings were commenced by advertisement, the mortgagor brought common-law and statutory claims seeking, in part, declaratory relief. 821 N.W.2d at 577-78. In reviewing the district court's grant of summary judgment against the mortgagor, the supreme court addressed whether statutes of limitations apply to claims for declaratory relief. *Id.* at 579. The supreme court held that "statutes of limitations apply to a declaratory judgment action to the same extent as a nondeclaratory proceeding based on the same cause of action." *Id.* at 580. It explained that this conclusion follows from the rule that "a complaint requesting declaratory relief must present a substantive cause of action that would be cognizable in a nondeclaratory suit." *Id.* at 579 (quotation omitted). The supreme court instructed that, to determine whether a declaratory-judgment action is timely, courts must "examine the essence or gravamen of the action to determine which, if any, statutes of limitations apply." *Id.* at 581 (quotation omitted). By implication, the supreme court recognized that there may be claims with no governing statute of limitations. *See id.*

The supreme court in *Weavewood* also recognized that, even when there are applicable statutes of limitations, they do not bar relief if the complaint asserts "pure defenses" rather than "affirmative claims for relief." *Id.* The *Weavewood* court cited *Reynolds v. Reynolds*, 458 N.W.2d 103 (Minn. 1990). *Id.* In *Reynolds*, the supreme court concluded that a husband was not barred from claiming nonpaternity as a defense in a

dissolution and support action even though the time for bringing an affirmative claim for a declaration of nonparentage had lapsed. 458 N.W.2d at 105. The *Reynolds* court explained that “the statute of limitations does not bar a party from raising a *pure defense*” because “[t]he general rule is that the statute of limitations may be used as a shield, not as a sword.” *Id.*

While the supreme court in *Weavewood* ruled that statutes of limitations apply to claims for declaratory relief, it declined to determine whether the specific claims in that case were in fact time-barred and remanded the matter to this court. 821 N.W.2d at 581. On remand, we first rejected the mortgagee’s argument that the mortgagor’s complaint did not assert a pure defense because the mortgagor was not defending itself against a suit. *Weavewood, Inc. v. S & P Home Invs., LLC*, No. A10-1762, 2013 WL 599125, at *2 (Minn. App. Feb. 19, 2013). We concluded that, “in the context of a foreclosure by advertisement, a mortgagor’s challenge to the validity of the mortgage or foreclosure sale presents a pure defense so long as it is asserted to prevent a pending foreclosure.” *Id.* at *1. Next, we reviewed each of the mortgagor’s claims to determine whether they were asserted to prevent a pending foreclosure. *Id.* at *4-6. We concluded that five of the mortgagor’s claims sought to set aside the mortgage and prevent foreclosure. *Id.* Those claims, we concluded, presented pure defenses and were therefore not time-barred. *Id.*

Westman contends that the supreme court’s holding in *Weavewood*—that claims for declaratory judgment are subject to the statutes of limitations that apply to the underlying substantive claims—does not apply to a quiet-title action under section 559.01. He also asserts that the statutes of limitations advanced by respondents—the two-year statutes of

limitations in sections 334.02 and 541.07(2) or, alternatively, the six-year statute of limitations in section 541.05, subdivision 1(2)—do not apply to the claim here. Finally, Westman asserts that, even if a statute of limitations applies, it does not bar his quiet-title claim because the complaint asserts a pure defense.

We need not decide whether an action for declaratory relief under section 559.01 is subject to any statute of limitations, including those advanced by respondents here, because, we conclude, Westman’s quiet-title claim presents a “pure defense.” Westman’s quiet-title claim is based on alleged violations of state usury statutes. Based on those statutes, he is asking the district court to declare that the note and mortgage are void to prevent a foreclosure. He does not seek monetary recovery for this claim. Westman’s quiet-title claim, like the five claims in *Weavewood*, constitutes a pure defense to a foreclosure action. As such, the claim is not time-barred.

We recognize that in *Weavewood* a foreclosure by advertisement was already pending whereas, here, Westman brought his claim before any foreclosure action was initiated. But whether Westman asserted his claim for declaratory relief in a complaint after initiation of a foreclosure by advertisement or as a claim in a judicial foreclosure proceeding, his claim would still be defensive in nature. We see no compelling reason why Westman’s claim may not be determined at this earlier stage—when the mortgage servicer has sent a notice of default and notice of intent to foreclose.

Because we conclude that the district court erred by granting summary judgment to respondents on Westman’s quiet-title claim, we reverse the district court’s grant of

summary judgment in favor of respondents on that basis and remand to the district court for further proceedings. We do not address the merits of Westman's claim.²

II. The district court erred by granting summary judgment to SLS on Westman's MOSLA claim on the ground that Westman could not prove that he was injured by the allegedly usurious interest rate.

We turn to Westman's second claim, which alleges that SLS violated MOSLA. MOSLA prohibits a residential mortgage servicer from "violat[ing] any provision of any other applicable state or federal law regulating residential mortgage loans including, without limitation, section[] 47.20." Minn. Stat. § 58.13, subd. 1(8). Section 47.20, as noted above, imposes a limit on interest rates for conventional residential loans. Minn. Stat. § 47.20, subd. 4a(a). "A borrower injured by a violation of the standards, duties, prohibitions, or requirements of section[] 58.13 . . . shall have a private right of action and the court shall award" various remedies, including damages and attorney fees. Minn. Stat. § 58.18, subd. 1.

² Respondents argue that they are entitled to summary judgment for several reasons that, while presented as part of their statute-of-limitations arguments, actually go to the merits of the quiet-title claim. Respondents assert that, because Gulf Harbour is a "holder in due course," section 334.03 does not apply to them. They also assert that Westman is entitled to no remedy even if the note contains a usurious rate because the note provides that any rate determined to be unlawful will be reduced to "the permitted limit" and any overpayments will be applied to the principal. Finally, respondents argue that, even if the note is usurious, Westman is not entitled to have the entire debt declared void because he was not making payments on the loan and, under the note, any usurious sums would go toward reducing the principal. The district court did not rule on these issues. While an appellate court "may affirm a grant of summary judgment if it can be sustained on any grounds," *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012), it is not clear to us, on this record, that the issues were properly presented in the district court or may be resolved based on the record developed there. We therefore do not evaluate whether summary judgment for respondents may be appropriate based on any of these alternative arguments.

The district court concluded that Westman’s MOSLA claim fails as a matter of law. It reasoned that, because Westman did not make payments after the two- or six-year statutes of limitations expired, he cannot show that he was “injured” by SLS’s alleged violation of section 47.20.

In section I above, we concluded that no statute of limitations bars Westman’s quiet-title action based on an alleged violation of section 47.20. But, in any event, Westman does not contend that he was injured by making payments to SLS. Rather, he argues that he “was injured by [SLS’s] notice of intent to foreclose and demands for usurious interest” because they forced him “to retain counsel to defend his real estate.” He asserts that his “attorney fees are the natural consequence of SLS’s actions.”

To support his argument, Westman relies on *Engstrom v. Whitebirch, Inc.*, 931 N.W.2d 786 (Minn. 2019). In that case, the plaintiff asserted consumer-fraud claims under the Minnesota private attorney general statute, Minnesota Statutes section 8.31, subdivision 3a (2022).³ *Engstrom*, 931 N.W.2d at 789. The private attorney general statute provides that “any person injured by a violation of” certain laws, including the consumer fraud act, “may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney’s fees.” Minn. Stat. § 8.31, subds. 1, 3a (2022). The district court dismissed the plaintiff’s complaint, concluding that the plaintiff had not alleged an “injury” because he had not paid any money to the defendants. *Engstrom*, 931 N.W.2d at 789. The supreme court reversed. *Id.* at 791.

³ Although the *Engstrom* decision discussed the 2018 version of the statute, we cite the current 2022 version because the language of the statute has not been changed.

Applying a dictionary definition of the word “injury” as “hurt, damage, or loss sustained,” the court concluded that “a person who is targeted by a fraudulent demand and consequently pays an attorney to investigate his liability in response to that demand has been ‘injured’ within the meaning of the private attorney general statute.” *Id.* at 787, 791 (quotation omitted).

We agree with Westman that *Engstrom* is analogous. Like the private attorney general statute, MOSLA does not define “injured,” so the dictionary definition of “injury” may be applied. And, under that definition, the pecuniary loss from hiring a lawyer to investigate and respond to a demand that is allegedly made in violation of law can constitute “injury.” Here, Westman submitted evidence that he spent money on legal fees responding to SLS’s demand for payment and notice of intent to foreclose, which were allegedly made in violation of state usury laws. Westman therefore provided sufficient evidence of “injury” to defeat summary judgment on this basis.⁴

⁴ Respondents also argue that we should affirm summary judgment on the alternative ground that “damages” are an element of a MOSLA claim and Westman failed to present proof of damages. They cite two federal cases and one nonprecedential decision from this court in support of their argument: *Winkler v. GMAC Mortgage, LLC*, No. 12-cv-46, 2012 WL 1883916 (D. Minn. May 22, 2012), *Wirtz v. Specialized Loan Servicing, LLC*, 987 F.3d 1156 (8th Cir. 2021), and *LeMaster v. Green Tree Servicing, LLC*, No. A15-0552, 2015 WL 9437640 (Minn. App. Dec. 28, 2015). We are not persuaded. First, we are not bound by a federal court’s interpretation of Minnesota law, *TCI Bus. Cap., Inc. v. Five Star Am. Die Casting, LLC*, 890 N.W.2d 423, 431 (Minn. App. 2017), or by our nonprecedential decisions, Minn. R. Civ. App. P. 136.01, subd. 1(c). Second, we are not convinced that the cases are persuasive here. *Winkler* involved an alleged MOSLA violation based on claims of fraud and misrepresentation, which require proof of detrimental reliance, and the district court concluded that, because such proof was absent, the MOSLA claim failed. 2012 WL 1883916, at *4. *LeMaster*, too, rejected the plaintiff’s MOSLA claim because she took no action based on the defendant’s allegedly deceptive or misleading offers of loan modification. 2015 WL 9437640, at *5. Neither *Winkler* nor *LeMaster* concludes that a

Accordingly, SLS is not entitled to summary judgment on the ground that Westman was not “injured” by an alleged violation of section 47.20. We therefore reverse the district court’s grant of summary judgment in favor of SLS on that basis and remand to the district court for further proceedings. We do not address the merits of Westman’s MOSLA claim.

Reversed and remanded.

MOSLA claim based on an alleged violation of section 47.20 requires proof of monetary damages—separate from “injury”—to sustain the claim. And, although *Wirtz* addresses the meaning of “injured” in MOSLA, it does not address “damages” as a separate requirement. 987 F.3d at 1159-60.