COURT OF APPEALS
DECISION
DATED AND FILED

May 15, 2018

Sheila T. Reiff
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. 2017AP1677 **Cir. Ct. No. 2016CV55**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

RURAL HOUSING SERVICE F/D/B FARMERS HOME ADMINISTRATION,

PLAINTIFF-RESPONDENT,

V.

LINDA L. MIDDAUGH-PIRKOV,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Calumet County: JEFFREY S. FROEHLICH, Judge. *Reversed and cause remanded for further proceedings*.

Before Stark, P.J., Hruz and Seidl, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Linda Middaugh-Pirkov (Middaugh), pro se, appeals a summary judgment of foreclosure in favor of Rural Housing Service f/d/b Farmers Home Administration (RHS). We conclude the circuit court erred by granting RHS summary judgment on its foreclosure claim because RHS failed to make a prima facie case for summary judgment. Further, even assuming RHS made a prima facie case, Middaugh's response demonstrated the existence of a genuine issue of material fact. We therefore reverse the foreclosure judgment and remand for further proceedings. We either reject, or need not address, Middaugh's other appellate arguments.

BACKGROUND

¶2 Middaugh executed two promissory notes in favor of RHS on May 30, 1980. One note (Note 1) had a principal sum of $24,100, and the other (Note 2) had a principal sum of $4,400. Both notes were secured by a mortgage on real estate in Calumet County. The mortgage required Middaugh to purchase insurance for the subject property and to pay all taxes assessed against it. The mortgage provided that, if Middaugh failed to pay those amounts, RHS could pay them, and Middaugh would then be required to reimburse RHS for any such payments, with interest. The mortgage further provided that any amounts Middaugh owed RHS for taxes or insurance would be secured by the mortgage.

¶3 It appears undisputed that Note 2 was paid in full in March 1981. In March 2016, RHS commenced the instant foreclosure action against Middaugh with respect to Note 1, alleging she had "failed to comply with the terms and conditions of the … Note and Mortgage by failing and neglecting to pay the monthly installments since May 8, 2002." The complaint alleged Middaugh owed RHS $86,980.06, comprised of: (1) $5,937.98 in principal; (2) $8,296.90 in

interest; (3) $28,488.28 for "Total Subsidy";[1] (4) "Escrow" of $832; and (5) $43,424.90 in "Fees Assessed." In its prayer for relief, RHS requested, among other things, that the circuit court enter a judgment of foreclosure and sale and "adjudge[] and determine[]" the amounts Middaugh owed RHS for principal, interest, late charges, taxes, insurance premiums, costs, disbursements, and attorney fees.

¶4 Middaugh, by counsel, filed an answer to RHS's complaint in April 2016. She denied that she had "failed to comply with the terms of the note and mortgage" and affirmatively alleged that RHS had failed to comply with the mortgage's terms. As affirmative defenses, Middaugh alleged that: (1) RHS's complaint failed to state a claim on which relief could be granted, due to RHS's mishandling of the loan; (2) the amount that RHS claimed Middaugh owed was inaccurate; (3) RHS had "waived the principal and interest" on Middaugh's loan due to its servicing errors; (4) RHS had provided Middaugh with "numerous inconsistent documents" regarding the loan; and (5) the subsidy referenced in RHS's complaint was not collectible.

¶5 In support of her affirmative defenses, Middaugh attached to her answer a February 6, 2013 memorandum written by Thomas Hannah, a "Deputy Administrator" for "Centralized Servicing Center (CSC)."[2] In the memorandum,

[1] The record reflects that Middaugh received a subsidy from the government "in the form of interest credits." She executed a "Subsidy Repayment Agreement" on the same day she executed the notes and mortgage.

[2] Middaugh asserts in her appellate brief that CSC is the current servicer for her mortgage. RHS does not dispute that assertion. CSC is apparently a division of Rural Development (RD), which is an arm of the United States Department of Agriculture (USDA). For purposes of this appeal, neither RHS nor Middaugh distinguishes between RHS, CSC, and RD.

Hannah admitted that CSC had improperly serviced Middaugh's loan "over a period of several years." For instance, Hannah acknowledged that CSC had miscalculated the amount of the subsidy Middaugh received prior to 1990. He also described one instance during 1981 in which a payment of $4,448.42 was not applied to Note 1, and another instance during 1989 in which a payment of $124 was not applied to that note. Hannah stated CSC corrected those errors in April 2002.

¶6 In addition to the above servicing errors, Hannah's memorandum conceded CSC had provided a "lack of loan servicing" for an extended period of time. (Capitalization omitted.) Hannah explained that, in April 2005, after Middaugh "was dismissed from Chapter 13 Bankruptcy protection," her account was "severely delinquent," and CSC therefore accelerated Note 1. However, "[f]rom August 2006 until September 2010, the agency failed to take any action on the loan and the acceleration was suspended. Due to a processing error, billing statements were not systematically generated, and calls were not made to [Middaugh] regarding her delinquency. No payments were made during this time."

¶7 Hannah's memorandum further stated that, in October 2010, CSC cancelled the acceleration action from April 2005 and reaccelerated Middaugh's loan. Middaugh disputed the outstanding balance and claimed the loan had been paid in full. According to Hannah, CSC completed a "thorough audit" of Middaugh's loan in 2012, which revealed that the "Interest Credit" for the loan had been calculated incorrectly at the time of origination. As a result of that error, CSC reduced the unpaid principal balance on Middaugh's loan by $358.83 in July 2012. Middaugh continued to assert that the balance was incorrect and that her loan had been paid in full.

¶8 Finally, Hannah's memorandum described an ongoing dispute between RHS and Middaugh regarding the payment of property taxes and insurance premiums for the mortgaged property. As relevant to this appeal, the memorandum stated:

> In September 1999, RD paid $33.14 to the Calumet County Treasurer for delinquent real estate taxes; RD billed a recoverable cost fee [to Middaugh] and referred the loan for escrow setup and a reamortization. The loan was reamortized in October 1999. [Middaugh] did not sign the reamortization agreement because she disputed the setup of the escrow account; therefore, the reamortization was reversed in March 2000.
>
> Even though the reamortization was reversed, RD did not reverse the escrow setup. Since 2000, RD has paid [Middaugh's] homeowner's insurance and real estate taxes annually, even though [Middaugh] ceased making regular monthly payments, including escrow payments. RD has billed $20,021.60 in recoverable cost fees to [Middaugh's] account for payment of homeowner's insurance and real estate taxes.

"In order to resolve this longstanding dispute," Hannah ultimately recommended that CSC waive "the principal and interest balances in the amount of $12,344.49 due to improper loan servicing over a period of several years" and establish "a non-interest accruing five year repayment plan on the outstanding fee principal and interest balance of $28,059.60."

¶9 After Middaugh answered RHS's foreclosure complaint, RHS moved for summary judgment. In support of its motion, RHS relied on an affidavit of Kathy Dawe, a "Foreclosure Representative for USDA Rural Development." Dawe averred that she was "familiar with" Middaugh's loan, that she had reviewed the allegations in RHS's complaint, and that those allegations were "true and correct." Dawe further averred that Middaugh had made no payments on her loan since December 11, 2001, and the "date of default" was

May 28, 2002. She also averred that RHS had "paid real estate taxes and homeowner's insurance premiums on the subject property without reimbursement from [Middaugh]." In total, Dawe averred that Middaugh owed RHS $86,900.01.

¶10 In response to RHS's motion, Middaugh argued RHS was not entitled to summary judgment because there was a genuine issue of material fact regarding the amount she owed RHS. Middaugh submitted her own affidavit, in which she averred Note 1 had "been paid in full since 2001." In addition, Middaugh argued Dawe's affidavit "fail[ed] to assert the necessary elements to qualify as evidence under the Business Records exception to hearsay" because Dawe had merely averred she was "familiar" with Middaugh's loan, which was "insufficient to establish Dawe's qualification to testify as to the business records of RHS." Middaugh also noted there were no records attached to Dawe's affidavit to support the averments therein, and Dawe did not "describe[] how the balance stated [in her affidavit] was calculated." While Middaugh "concede[d]" that RHS had made "valid and proven protective advances for taxes and insurance," she disputed the interest owed on those payments. She faulted Dawe's affidavit for failing to itemize the insurance and tax payments RHS had made on her behalf, and she further argued Dawe was not "competent to testify" as to those amounts.

¶11 After multiple postponements, a summary judgment hearing was ultimately scheduled for April 18, 2017. However, on April 13, Middaugh's attorney moved to withdraw, citing "irreconcilable differences … as to how this case should proceed." The circuit court granted counsel's motion to withdraw on April 17. During the April 18 hearing, the court granted Middaugh's request for additional time to obtain new counsel and adjourned consideration of RHS's summary judgment motion until July 11.

¶12 In the meantime, RHS decided to limit the basis for its foreclosure claim to the taxes and insurance premiums it had paid on Middaugh's behalf. It did not seek to recover interest on those amounts. RHS also decided not to pursue a deficiency judgment.

¶13 RHS submitted an affidavit of Jennifer Williams as further support for its summary judgment motion. Williams averred that she was the "Section Head of the Bankruptcy Foreclosure Department for USDA Rural Development" and that her affidavit was based on "personal knowledge." She further averred:

> [RHS] has paid $34,022.11 for taxes and insurance on behalf of [Middaugh] during the time period of September 14, 1999 through February 15, 2017. This amount has not been paid by [Middaugh] or reimbursed to [RHS] by [Middaugh]. This amount does not include any interest that [RHS] may be entitled to. An itemization of these payments is attached hereto and incorporated as Exhibit A.

Exhibit A to Williams' affidavit was a table setting forth the amounts RHS had allegedly paid for Middaugh's taxes and insurance premiums between September 1999 and February 2017. Based on Williams' affidavit, RHS submitted a proposed foreclosure judgment stating that Middaugh owed RHS $34,022.11 for taxes and insurance premiums, plus additional amounts for attorney fees and costs.

¶14 On June 24, 2017, Middaugh wrote to the circuit court and requested additional time to obtain counsel. The court denied that request and informed Middaugh the matter would proceed as scheduled on July 11. Middaugh represented herself during the July 11 hearing. At the close of that hearing, the circuit court granted RHS summary judgment, explaining:

> The Court does accept Ms. Williams' affidavit, and Ms. Middaugh appears today having asserted that she objects to the amounts [set forth in that affidavit], does not agree with them, but without proof that these amounts were

> paid by her or have been reimbursed to the plaintiffs, so the Court does believe that there is no issue of material fact concerning the tax and insurance payments and will grant the plaintiff's motion.

The court signed RHS's proposed foreclosure judgment, and Middaugh now appeals.

DISCUSSION

¶15 Middaugh raises a number of arguments on appeal as to why the circuit court erred by granting RHS summary judgment. We conclude the court erred because RHS failed to make a prima facie case for summary judgment, and even if it did, Middaugh demonstrated the existence of a genuine issue of material fact. Given these conclusions, we need not address several of Middaugh's other arguments, which are rendered moot by our reversal of the foreclosure judgment. We reject Middaugh's remaining arguments on the merits.

I. Application of the summary judgment methodology

¶16 We independently review a grant of summary judgment, using the same methodology as the circuit court. ***Palisades Collection LLC v. Kalal***, 2010 WI App 38, ¶9, 324 Wis. 2d 180, 781 N.W.2d 503. Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." WIS. STAT. § 802.08(2) (2015-16).[3] When reviewing a grant of summary judgment, we examine the moving party's

[3] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

submissions to determine whether they establish a prima facie case for summary judgment. ***Palisades***, 324 Wis. 2d 180, ¶9. If the moving party has made a prima facie showing, we then examine the opposing party's affidavits to determine whether a genuine issue exists as to any material fact. ***Id.***

¶17 We conclude RHS failed to establish a prima facie case for summary judgment on its foreclosure claim. Although RHS initially alleged Middaugh had defaulted by failing to make the required monthly payments on her loan, it ultimately argued it was entitled to foreclosure based solely on Middaugh's failure to reimburse it for property taxes and insurance premiums it had paid on her behalf. However, neither of the affidavits RHS submitted in support of its summary judgment motion made a prima facie showing as to the amount of unreimbursed taxes and insurance premiums.

¶18 RHS first submitted Dawe's affidavit, which stated RHS had "paid real estate taxes and homeowner's insurance premiums on the subject property without reimbursement from [Middaugh]." However, Dawe did not specify the amount of the taxes and insurance premiums RHS had paid on Middaugh's behalf. Although her affidavit listed amounts that Middaugh allegedly owed RHS, none of the listed items clearly corresponded to property taxes and insurance premiums, nor did Dawe make any averments regarding how the amounts were calculated.

¶19 Moreover, affidavits in support of summary judgment "shall be made on personal knowledge." WIS. STAT. § 802.08(3). Affidavits "made by persons who do not have personal knowledge" are insufficient to support summary judgment "and will be disregarded." ***Leszczynski v. Surges***, 30 Wis. 2d 534, 538, 141 N.W.2d 261 (1966). Nothing in Dawe's affidavit suggests that she had personal knowledge of the amount of property taxes and insurance premiums that

RHS paid on Middaugh's behalf. Dawe merely averred that she was a "Foreclosure Representative for USDA Rural Development"; that she was "familiar with" Middaugh's mortgage; that she had reviewed RHS's complaint; and that the allegations in that complaint were "true and correct." She did not aver that she had reviewed any records in RHS's possession to support her assertions that RHS had paid Middaugh's taxes and insurance premiums and that Middaugh had failed to reimburse RHS for those amounts. In addition, there were no records attached to Dawe's affidavit to support her averment in that regard. It is not apparent how Dawe determined that RHS's allegations were "true and correct."

¶20 Williams' affidavit is also deficient. Williams averred that RHS had paid $34,022.11 for taxes and insurance on Middaugh's behalf, and Middaugh had not reimbursed RHS for those payments. Williams further averred that an "itemization" of RHS's tax and insurance payments was attached to her affidavit as Exhibit A. The "itemization" consists of a list of dates, beginning on September 14, 1999, on which RHS allegedly made tax and insurance payments on Middaugh's behalf, and the amount of such payments.

¶21 RHS has failed to make a prima facie showing that Exhibit A to Williams' affidavit would be admissible at trial. *See* ***Palisades***, 324 Wis. 2d 180, ¶10. Specifically, RHS has not made a prima facie showing that Exhibit A falls within the hearsay exception for records of regularly conducted activity. *See* ***id.***, ¶11. To qualify for that exception, a record must be

> [a] memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, all in the course of a regularly conducted activity, *as shown by the testimony of the custodian or other qualified witness* ….

WIS. STAT. § 908.03(6) (emphasis added). ***Palisades*** clarified that, for a record to be admissible under this exception, a custodian or other witness must be qualified to testify that: (1) the record was made at or near the time by, or from information transmitted by, a person with knowledge; and (2) that this was done in the course of a regularly conducted activity. ***Palisades***, 324 Wis. 2d 180, ¶20. To be qualified to testify on these two points, the witness must have "personal knowledge" of how the record was prepared and that it was prepared in the ordinary course of business. ***Id.***, ¶21.

¶22 Williams' affidavit is insufficient to make this showing with regard to Exhibit A. The affidavit merely states that Williams is the "Section Head of the Bankruptcy Foreclosure Department for USDA Rural Development" and that her affidavit is "based on personal knowledge." These averments do not reasonably suggest that Williams had personal knowledge of how Exhibit A was prepared or that it was prepared in the ordinary course of RHS's business. *See* ***id.*** Without further support, an affiant's mere declaration that he or she has personal knowledge of events set forth in an affidavit "does not make it so." ***Gemini Capital Grp., LLC v. Jones***, 2017 WI App 77, ¶24, 378 Wis. 2d 614, 904 N.W.2d 131.

¶23 Furthermore, there is nothing in Williams' affidavit to show that, absent Exhibit A, Williams would have personal knowledge regarding the amount of unreimbursed taxes and insurance premiums that RHS paid on Middaugh's behalf. In other words, Williams' affidavit provides no basis for an inference that her averment regarding the amount of unreimbursed taxes and insurance premiums was based on anything other than Exhibit A. Williams' averment regarding that amount, standing alone, is therefore insufficient to make a prima facie showing of

the amount Middaugh owes RHS. *See* ***id.***, ¶¶22-24; *see also* ***Palisades***, 324 Wis. 2d 180, ¶23.

¶24 Because RHS's affidavits are insufficient to establish the amount of unreimbursed tax and insurance payments that RHS made on Middaugh's behalf, RHS failed to make a prima facie showing that it was entitled to a summary judgment of foreclosure based on those payments. The circuit court therefore erred by granting RHS's summary judgment motion.

¶25 However, even assuming RHS made a prima facie showing, we would nevertheless reverse because Middaugh demonstrated the existence of a genuine issue of material fact regarding the amount she owes RHS for taxes and insurance. In response to RHS's summary judgment motion, Middaugh submitted her own affidavit, attached to which was Exhibit F, a "Corrected Payment History" for Note 1. As Middaugh pointed out during the July 11, 2017 summary judgment hearing, Exhibit F shows a balance of "$0.00" under the column entitled "Fee" for both February 5, 2001, and April 18, 2002. Based on Exhibit F, Middaugh argued that, contrary to Exhibit A from Williams' affidavit, RHS did not pay Middaugh's property taxes and insurance premiums "from '99 forward." Although the heading "Fee" is somewhat ambiguous, one could reasonably infer that term encompasses advances made for taxes and insurance. None of the other headings on Exhibit F appear to indicate that a balance was due for taxes and insurance on the relevant dates. We therefore agree that Exhibit F raises a genuine issue of material fact regarding the amount Middaugh owes RHS for unreimbursed tax and insurance payments.

¶26 For the reasons explained above, we conclude RHS has failed to make a prima facie case for summary judgment, and in any event, Middaugh has

demonstrated the existence of a genuine issue of material fact. We therefore reverse the circuit court's grant of summary judgment to RHS and remand for further proceedings on RHS's foreclosure claim.[4]

II. Arguments rendered moot by our reversal

¶27 Middaugh raises several additional arguments on appeal that we need not address, given our reversal of the foreclosure judgment. Specifically, Middaugh argues: (1) the circuit court violated her right to due process when it denied her request for additional time to obtain an attorney, and when it prevented her from fully presenting her arguments during the July 11, 2017 summary judgment hearing; (2) the court erred by stating the attorney fees requested by RHS were reasonable; and (3) Middaugh is entitled to discretionary reversal in the interest of justice. Because we reverse the foreclosure judgment on other grounds, our resolution of these additional arguments would have no practical effect on the underlying controversy. These arguments are therefore moot, and we decline to address them further. *See* ***State ex rel. Olson v. Litscher***, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425 (appellate courts generally do not consider moot issues); *see also* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (the court of appeals need not address all issues raised by the parties if one is dispositive).

[4] Middaugh also argues RHS is not entitled to summary judgment on its foreclosure claim because Note 1 was paid in full in 2001. Middaugh therefore asserts her mortgage should have been satisfied in 2001, and as a result, any tax and insurance payments RHS made on her behalf cannot be the basis for a foreclosure judgment. We have not been able to locate any evidence in the record substantiating Middaugh's claim that Note 1 was paid in full in 2001. RHS disputes Middaugh's claim, but it does not cite any evidence as to the balance due on Note 1 at any point during 2001. Given the dearth of evidence regarding this issue, we do not rely on it as a basis for our decision. However, nothing in this opinion should be read as preventing either party from introducing additional evidence or argument regarding this topic on remand.

III. Middaugh's remaining arguments

¶28 Middaugh raises three additional arguments that are not moot because, if Middaugh prevailed on any of these arguments, the result would be an outright reversal of the foreclosure judgment, rather than a reversal coupled with a remand for further proceedings. We therefore address Middaugh's three remaining arguments on the merits.

¶29 First, Middaugh contends RHS should not have been permitted to "switch[] horses in the middle of the stream." (Capitalization omitted.) This argument is based on the fact that, although RHS initially alleged in its complaint that it was entitled to foreclosure because Middaugh was in default for failing to make monthly payments, it later changed tack and contended Middaugh was in default for failing to reimburse RHS for tax and insurance payments it made on her behalf.

¶30 Middaugh's argument appears to be that, because RHS never amended its complaint, she lacked proper notice of the basis for RHS's claim against her. We disagree. Wisconsin is a notice pleading state. ***Wolnak v. Cardiovascular & Thoracic Surgeons of Cent. Wis., S.C.***, 2005 WI App 217, ¶47, 287 Wis. 2d 560, 706 N.W.2d 667. "Under notice pleading, one need only give the opposing party fair notice of what the claim is and the grounds upon which it is based." ***Id.***; *see also* WIS. STAT. § 802.02(1). Here, RHS's complaint alleged that Middaugh was in default and that she owed RHS a total of $86,980.06. In its prayer for relief, RHS expressly asked the circuit court to adjudge and determine the amounts Middaugh owed, including any advances RHS had made for taxes and insurance premiums. These allegations gave Middaugh sufficient notice of the claim against her.

¶31 In addition, Middaugh later received clear notice that RHS was limiting the basis for its foreclosure claim to the taxes and insurance premiums it had paid on her behalf, by virtue of RHS's proposed findings of fact and conclusions of law. That document was filed in February 2017—nearly five months before the summary judgment hearing. Middaugh therefore had ample time before the hearing to respond to RHS's "new" argument regarding taxes and insurance premiums. Under these circumstances, we reject Middaugh's argument that reversal is required because the circuit court improperly permitted RHS to "switch[] horses in the middle of the stream."

¶32 Middaugh next argues RHS is not entitled to a foreclosure judgment because it lacks clean hands. Foreclosure proceedings are equitable in nature, ***GMAC Mortg. Corp. v. Gisvold***, 215 Wis. 2d 459, 480, 572 N.W.2d 466 (1998), and a party seeking equitable relief must come to the court with clean hands, ***Zinda v. Krause***, 191 Wis. 2d 154, 174, 528 Wis. 2d 55 (Ct. App. 1995). "For relief to be denied a plaintiff in equity under the 'clean hands' doctrine, it must be shown that the alleged conduct constituting 'unclean hands' caused the harm from which the plaintiff seeks relief." ***Security Pac. Nat'l Bank v. Ginkowski***, 140 Wis. 2d 332, 339, 410 N.W.2d 589 (Ct. App. 1987) (citing ***S & M Rotogravure Serv. v. Baer***, 77 Wis. 2d 454, 467, 252 N.W.2d 913 (1977)).

¶33 Middaugh argues RHS has unclean hands because Thomas Hannah admitted in his February 6, 2013 memorandum that CSC improperly serviced Middaugh's loan. However, our review of Hannah's memorandum indicates that, while Hannah admitted CSC made several "servicing errors," those errors pertained to RHS's calculation of the principal and interest due on Middaugh's

loan, as well as the amount of her subsidy.[5] RHS has abandoned its claim to recover any outstanding principal and interest, and Middaugh does not explain why errors regarding the calculation of those amounts or the amount of Middaugh's subsidy should prevent RHS from recovering the taxes and insurance premiums it paid on her behalf. We therefore reject Middaugh's argument that the "servicing errors" described in Hannah's memorandum render RHS's hands unclean with respect to the unreimbursed taxes and insurance premiums.[6]

¶34 Finally, Middaugh argues the equitable doctrine of laches bars RHS's foreclosure claim. Laches requires proof of three elements: (1) unreasonable delay by the party seeking relief; (2) lack of knowledge or acquiescence by the party asserting laches that a claim for relief was forthcoming; and (3) prejudice to the party asserting laches as a result of the unreasonable delay. ***Zizzo v. Lakeside Steel & Mfg. Co.***, 2008 WI App 69, ¶7, 312 Wis. 2d 463, 752 N.W.2d 889. "If any single element is missing, laches will not be applied and the claims [will be] allowed to proceed." ***Sawyer v. Midelfort***, 227 Wis. 2d 124, 159, 595 N.W.2d 423 (1999).

¶35 Middaugh's laches argument fails because she has not established that she was prejudiced by RHS's delay in filing the instant foreclosure action.

[5] Although Hannah's memorandum discussed the parties' dispute regarding the taxes and insurance premiums RHS had paid on Middaugh's behalf, he did not admit that RHS acted improperly with respect to those payments.

[6] Middaugh also appears to contend, in the section of her brief addressing RHS's unclean hands, that RHS failed to comply with the Real Estate Settlement Procedures Act (RESPA) and the National Housing Act of 1949. These arguments are undeveloped, in that they fail to describe *how* Middaugh believes RHS's conduct violated either act. We therefore decline to address Middaugh's arguments regarding RESPA and the National Housing Act. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

Middaugh does not dispute that RHS paid her property taxes and homeowner's insurance premiums for over fifteen years. RHS is now seeking to recover those amounts, without interest. Permitting RHS to do so at this point does not prejudice Middaugh because, had RHS not made those payments, Middaugh would have been required to do so. As RHS observes, "If anything[,] the delay [in filing suit] was to the benefit of Middaugh[,] in that she received an interest[-]free loan for her tax and insurance obligations." We therefore reject Middaugh's argument that the doctrine of laches bars the instant foreclosure action.

By the Court.—Judgment reversed and cause remanded for further proceedings.

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