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App. 818, 703 N.W.2d 134 (2005). Bonn's opposition was not directed at unlawful employment practices of the City of Omaha pursuant to FEPA. Therefore, her assignment of error is without merit.

CONCLUSION

We conclude that the trial court did not err in finding that Bonn was not opposing unlawful employment practices of the City of Omaha. Accordingly, there is no genuine issue of material fact regarding whether Bonn engaged in a protected activity under FEPA and the City is entitled to judgment as a matter of law. The trial court did not err in granting summary judgment in favor of the City. The judgment of the district court is affirmed.

AFFIRMED.

BEL FURY INVESTMENTS GROUP, L.L.C., APPELLEE, V. PALISADES COLLECTION, L.L.C., ET AL., APPELLEES, AND RITA BOWER, APPELLANT.

814 N.W.2d 394

Filed May 22, 2012. No. A-11-598.

1. **Limitations of Actions: Appeal and Error.** The determination of which statute of limitations applies is a question of law, and an appellate court must decide the issue independently of the conclusion reached by the trial court.
2. **Equity: Quiet Title.** A quiet title action sounds in equity.
3. **Equity: Appeal and Error.** On appeal from an equity action, an appellate court tries factual questions de novo on the record and, as to questions of both fact and law, is obligated to reach a conclusion independent of the conclusion reached by the trial court.
4. **Judgments: Appeal and Error.** A correct result will not be set aside even when the lower court applied the wrong reasoning in reaching that result.
5. **Real Estate: Liens.** The purchaser at the sale of property is not responsible for liens that are found to be junior and inferior to the foreclosed lien.
6. **Unjust Enrichment: Proof.** To recover on a claim for unjust enrichment, the plaintiff must show that (1) the defendant received money, (2) the defendant retained possession of the money, and (3) the defendant in justice and fairness ought to pay the money to the plaintiff.
7. **Subrogation.** The doctrine of equitable subrogation applies where a party is compelled to pay the debt of a third person to protect his own rights or interest or to save his own property.

8. ____. Subrogation is never awarded in equity to one who is merely a volunteer in paying the debt of another.

Appeal from the District Court for Douglas County: JOSEPH S. TROIA, Judge. Affirmed.

James Walter Crampton for appellant.

Brian J. Muench for appellee Bel Fury Investments Group, L.L.C.

INBODY, Chief Judge, and MOORE and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

Rita Bower appeals from a finding and order of the district court for Douglas County dated June 9, 2011. Based on the reasons that follow, we affirm.

BACKGROUND

Lynn and Janet Bower, husband and wife, were the owners of a single-family residence in Omaha, Douglas County, Nebraska, subject to a primary mortgage. At some point, they started experiencing financial difficulties and Lynn's mother, Rita, attempted to help them. Rita paid approximately $6,000 to the mortgage company to save the property from foreclosure in 2003. Lynn and Janet promised to pay back Rita in 8 weeks. They did not pay her back, and Rita did not demand payment. Later that year, PRA III, LLC, obtained a county court judgment against Janet and this judgment was registered in the Douglas County District Court.

On September 14, 2005, Rita paid another sum of $7,000 to the mortgage company to avoid foreclosure of the mortgage after a notice of default. On the same day, Lynn and Janet executed a promissory note for the $13,000 Rita had paid toward the property to date, a deed of trust securing the note, and a document purportedly giving Rita a power of attorney for them both. On October 28, Rita filed the deed of trust with the Douglas County register of deeds. She also executed a quitclaim deed purporting to transfer the property

from Lynn and Janet to herself, but she did not record the quitclaim deed.

On January 25, 2006, PRA III held an execution sale of Lynn and Janet's home to satisfy the judgment lien and the home was purchased by Bel Fury Investments Group, L.L.C. (Bel Fury). A confirmation of sale hearing was conducted, and a sheriff's deed was issued to Bel Fury. The order was issued March 7, and Bel Fury recorded the sale in the register of deeds' office on March 14. On June 7, Bel Fury filed a partition action in Douglas County District Court, and Lynn and Janet were both served with summons and a copy of the complaint.

On July 6, 2006, Janet died before an answer could be filed on her behalf. Lynn filed an answer, and Janet's daughter, as personal representative of Janet's estate, filed an answer on behalf of the estate. However, Bel Fury never filed a motion to revive the case against Janet's estate, and the case was dismissed as to Janet. Rita testified she was not aware of the partition proceedings at the time Lynn was served, but she was present at the hearings and did not enter an appearance or attempt to intervene either in her capacity as power of attorney or in her own behalf.

On September 1, 2006, Rita made another payment of $8,375 to the mortgage company because she said she hoped it would avoid foreclosure and allow Janet's daughter the opportunity to buy the property from Bel Fury. At this point, Rita knew of the Bel Fury deed and its ownership of the property, but she paid the money anyway. Bel Fury was awarded summary judgment on September 18, because Lynn did not claim any interest in the property and Bel Fury had purchased Janet's interest in the property through the prior execution sale. Bel Fury paid off the mortgage on the property and paid approximately $30,000 to fix the property for sale. In March 2007, the property was subsequently sold for $200,000 to Jonathan L. Boothe, Jr., and Samara Boothe.

Bel Fury filed a complaint to quiet title in September 2009, and in February 2010, Rita answered and counterclaimed for foreclosure of the deed of trust, partition, and unjust enrichment. This matter went to trial in the district court for Douglas

County in April 2011, and in June, the trial court issued a finding and order concluding that Rita no longer had a security interest via the promissory note and deed of trust, because the applicable 5-year statute of limitations had run.

Rita timely filed this appeal on July 11, 2011.

ASSIGNMENTS OF ERROR

Rita assigns two errors: The district court erred in finding Rita no longer had a security interest, because the 5-year statute of limitations had run, and the district court erred in failing to find for Rita on her foreclosure action and her claim of unjust enrichment.

STANDARD OF REVIEW

[1] The determination of which statute of limitations applies is a question of law, and an appellate court must decide the issue independently of the conclusion reached by the trial court. *PSB Credit Servs. v. Rich*, 251 Neb. 474, 558 N.W.2d 295 (1997).

[2,3] A quiet title action sounds in equity. *Ottaco Acceptance, Inc. v. Larkin*, 273 Neb. 765, 733 N.W.2d 539 (2007). On appeal from an equity action, an appellate court tries factual questions de novo on the record and, as to questions of both fact and law, is obligated to reach a conclusion independent of the conclusion reached by the trial court. *Channer v. Cumming*, 270 Neb. 231, 699 N.W.2d 831 (2005).

ANALYSIS

Statute of Limitations.

The trial court found Rita no longer had a security interest via the promissory note and deed of trust, because the 5-year statute of limitations had run per the Nebraska Trust Deeds Act, see Neb. Rev. Stat. § 76-1015 (Reissue 2009), and per the limitation of actions on written instruments, Neb. Rev. Stat. § 25-202 (Reissue 2008). See *PSB Credit Servs. v. Rich, supra*.

We find, however, that § 76-1015 does not apply to the current situation. In *PSB Credit Servs. v. Rich, supra*, the Nebraska Supreme Court stated the plain reading of the statute pertains to a situation where the trustee exercises a power of sale upon

default. That case involved a judicial foreclosure, as opposed to a trustee foreclosure; thus, § 76-1015 was determined to be inapplicable. That same reasoning applies in this case, as it was not a trustee foreclosure; thus, the 5-year statute of limitations applied by the trial court was incorrect. Rather, the procedure used for foreclosure of mortgages or deeds of trust as mortgages would apply under § 25-202. Pursuant to that statute, a party must bring the action within 10 years of the date the debt secured by the mortgage matured. Or, where there is no date of maturity listed within the deed of trust, the cause of action accrues no later than 30 years after the date of the mortgage or deed of trust under § 25-202(2)(b).

[4] Notwithstanding this error by the trial court, we have said many times in the past that a correct result will not be set aside even when the lower court applied the wrong reasoning in reaching that result. See *Stoetzel v. Neth*, 16 Neb. App. 348, 744 N.W.2d 465 (2008).

In this case, the record indicates the deed of trust, which contained no date of maturity, was executed on September 14, 2005, and Rita filed a counterclaim for foreclosure in February 2010. Regardless of whether § 76-1015 or § 25-202 applies, the foreclosure was filed within 5 years of the creation of the deed of trust; thus, the statute of limitations as it relates to the deed of trust had not expired.

Foreclosure.

We must now consider whether Rita had a valid security interest in the property via the promissory note and deed of trust and whether she is entitled to recover under any such interest.

[5] The purchaser at the sale of property is not responsible for liens that are found to be junior and inferior to the foreclosed lien. See *First Nat. Bank of York v. Critel*, 251 Neb. 128, 555 N.W.2d 773 (1996). There were three potential encumbrances on the property. First, the property was subject to a primary mortgage. Then PRA III established a judgment lien against Janet in 2003. Finally, Rita's deed of trust was filed in 2005. Rita's claim on the property was junior to the judgment lien when Bel Fury purchased the property at

the execution sale. Thus, Bel Fury was responsible for the primary mortgage but not for Rita's claim upon the sale of the property.

The sheriff's sale terminated Janet's interest in the property, but not Lynn's. Rita testified that she was not aware of the partition proceedings at the time Lynn was served, but she was present at the hearings and did not enter an appearance or attempt to intervene either in her capacity as power of attorney or in her own behalf. Rita's power of attorney was never publicly recorded or acknowledged, nor is there any indication in the record before us that Bel Fury was made aware of its existence.

In the partition proceedings, the court determined Janet no longer held an interest in the property, and any interest Lynn had in the property was extinguished because he failed to claim any interest in his answer. The court granted summary judgment on September 18, 2006, and found Bel Fury had fee simple title to the property subject only to the prior mortgage.

Following that decision, Bel Fury sold the property to the Boothes on March 13, 2007, and the Boothes were good faith purchasers for value. Rita's answer and counterclaim for foreclosure of the deed of trust, partition, and unjust enrichment was filed February 16, 2010, in response to Bel Fury's complaint to quiet title. Rita's counterclaim for foreclosure, although technically brought within the applicable statute of limitations, was not timely, given the prior judicial sale and confirmation to Bel Fury and Rita's failure to participate in the earlier partition proceedings. We find that the property was not subject to any viable interest attributable to Rita and that she failed to prove her counterclaim at the time the quiet title action was tried in the Douglas County District Court.

Equitable Relief.

Rita also alleges she should recover from Bel Fury under theories of unjust enrichment and quasi-contract for the payments she made toward the mortgage. Rita cites *Bush v. Kramer*, 185 Neb. 1, 3, 173 N.W.2d 367, 369 (1969), which states, "Where benefits have been received and retained

under such circumstances that it would be inequitable and unconscionable to permit the party receiving the benefits to avoid payment therefor, the law requires the party receiving and retaining the benefits to pay the reasonable value of them."

Rita claims she is owed for the $13,000, plus interest, detailed in the deed of trust, but, as discussed above, she is not entitled to this after she failed to protect her interest during the partition action. In addition, Rita paid the $13,000 to the mortgage company for the benefit of Lynn and Janet, prior to Bel Fury's involvement with the property. Bel Fury clearly did not receive these payments directly.

Further, Rita argues she is owed for the third payment to the mortgage company in September 2006, during the pendency of the partition action. Rita argues the district court should have found for her on theories of unjust enrichment and quasi-contract.

Rita cites *Washa v. Miller*, 249 Neb. 941, 950, 546 N.W.2d 813, 818-19 (1996), which states that the "doctrine of unjust enrichment is recognized only in the absence of an agreement between the parties," and Rita argues that she is entitled to recovery because there is no evidence of an agreement between Bel Fury and Rita. However, the issue in *Washa* was not whether there was an agreement between parties; rather, it was whether there was an agreement on a specific item as part of a larger deal. The party seeking a finding of unjust enrichment must be a party to a transaction with the party allegedly unjustly enriched. Rita and Bel Fury were not parties to the same transaction; thus, Rita cannot recover for unjust enrichment on this basis.

[6] To recover on a claim for unjust enrichment, Rita must show that (1) Bel Fury received money, (2) Bel Fury retained possession of the money, and (3) Bel Fury in justice and fairness ought to pay the money to Rita. See *Kanne v. Visa U.S.A.*, 272 Neb. 489, 723 N.W.2d 293 (2006). Rita asserts the first two elements are undisputed, and the third was not addressed by the court. However, a de novo review of the record reveals that each time Rita made payments on the mortgage, the money was sent directly to the mortgage

company. Rita's analysis assumes that any money paid to the mortgage company is automatically considered "received" by Bel Fury.

Though Bel Fury arguably received the benefit of the third payment from Rita, because it was presumably applied to the outstanding balance of the mortgage, they did not receive the money or at any time gain or retain possession of her payment. Further, we must consider whether justice and fairness require Bel Fury to pay the money to Rita when she knowingly made payments despite being aware of Bel Fury's interest in the property.

[7,8] Rita testified that at the time of the third payment, she was aware of Bel Fury's interest in the property and made the payment despite that knowledge. The doctrine of equitable subrogation applies where a party is compelled to pay the debt of a third person to protect his own rights or interest or to save his own property. *Rawson v. City of Omaha*, 212 Neb. 159, 322 N.W.2d 381 (1982). However, Rita was not acting to protect her own interest in the property; she was merely trying to avoid foreclosure so Janet's daughter could possibly purchase the property from Bel Fury. Rita was not the owner of the property, she was not subject to the terms of the mortgage, and she was not obligated in any way to make the payment. "[S]ubrogation is never awarded in equity to one who is merely a volunteer in paying the debt of another." 212 Neb. at 165, 322 N.W.2d at 384. Rita's payment was voluntary, and therefore, she is unable to recover for unjust enrichment for the value of the voluntary third payment.

Finally, at the trial before the district court, Rita testified that Lynn and Janet never made a payment on the promissory note, she never formally demanded payment, and at no time had she ever received money from anyone for the voluntary payments she made to the mortgage company. She also testified that she did not make any claim against Janet's estate, although she could have. Despite these facts, Rita testified at the trial that Lynn and Janet did not owe her anything on the promissory note. As a result, Bel Fury effectively argued that if there was no amount due on the promissory note, then the claims are extinguished.

We find the district court correctly determined Rita is not entitled to a recovery for unjust enrichment or under any other theory of recovery.

CONCLUSION

We find the applicable statute of limitations had not run with regard to the foreclosure of Rita's promissory note and deed of trust. However, for the reasons discussed above, we find Rita had no viable security interest in the property or any other equitable claim. We affirm the decision of the trial court finding for Bel Fury on Rita's claims for foreclosure and unjust enrichment.

AFFIRMED.