

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE TROMBLEY, JR.,
and VERA TROMBLEY, his wife,

UNPUBLISHED
February 4, 1997

Plaintiff-Appellants,

v

No. 187367

Lapeer Circuit Court
LC No. 94-020939-CH

CAPAC STATE SAVINGS BANK, a Michigan
Banking Corporation, and CHRISTINA C.
WITHROW and THOMAS R. POWERS,
Jointly and Severally,

Defendants-Appellees.

Before: Corrigan, P.J., and J.B. Sullivan* and T.G. Hicks,** J.J.

PER CURIAM.

Plaintiffs appeal as of right an order granting defendant Capac State Savings Bank's motion for summary disposition pursuant to MCR 2.116(C)(7). We affirm.

Plaintiffs defaulted on a mortgage debt owed to defendant which was secured by a 160-acre parcel of land. Plaintiffs' home was on the tract. In lieu of foreclosure, the parties entered into an agreement on November 26, 1982, which provided that plaintiffs would deed the tract of land to defendant in exchange for defendant's promise to forebear from exercising foreclosure rights. Defendant further agreed that it would "immediately survey out the house, buildings and ten (10) acres of such length and width as is agreed to by both parties." Defendant was then required to deed the mutually agreed upon ten-acre tract back to plaintiffs, discharge plaintiffs' debt, and retain the 150-acre tract.

* Former Court of Appeals Judge, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

** Circuit judge, sitting on the Court of Appeals by assignment.

Rather than immediately surveying out a mutually agreed upon ten-acre parcel, defendant unilaterally quitclaimed to plaintiffs a ten-acre parcel of defendant's own choosing. The deed was recorded on December 3, 1982. The edge of the property line described in the quitclaim deed passed through plaintiffs' mobile home and driveway.

Defendant sold its 150-acre tract in 1992 to defendants Withrow and Powers. Plaintiffs objected to the sale because the property line between the tracts of land passed through their home. Plaintiffs filed a complaint against defendant Capac in 1994 alleging that the bank breached its 1982 agreement by selling the 150-acre parcel to Withrow and Powers without first surveying out a mutually agreeable ten-acre parcel for the benefit of plaintiffs. Plaintiffs also alleged that defendant was guilty of fraudulent concealment and innocent representation. Plaintiffs further sought partial rescission and reformation of the contract of sale between Capac and Withrow and Powers.

Defendant filed a motion for summary disposition claiming that plaintiffs' actions for breach of contract and fraudulent concealment/innocent misrepresentation were barred by the applicable six-year statute of limitations and that plaintiffs' action for rescission was barred by the equitable doctrine of laches. The trial court granted defendant's motion.

On appeal, plaintiffs contend that the trial court erred in granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7). We disagree. A trial court's determination to grant a motion for summary disposition pursuant to MCR 2.116(C)(7) is reviewed de novo. *Peters v Dep't of Corrections*, 215 Mich App 485, 486; 546 NW2d 668 (1996); *Int'l Recovery System v Gabler*, 208 Mich App 49, 51; 527 NW2d 20 (1994). In reviewing such a motion, this Court must accept plaintiff's well-pleaded allegations as true and examine any pleadings, affidavits, depositions, admissions, and documentary evidence submitted by the parties in a light most favorable to the non-movants. *Gortney v Norfolk & WR Co*, 216 Mich App 535, 538-539; 549 NW2d 612 (1996); *Simmons v Apex Drugs*, 201 Mich App 250, 252; 506 NW2d 562 (1993). The contents of plaintiff's complaint must be accepted as true unless specifically contradicted by documentary evidence submitted by the movant. *Patterson v Kleiman*, 447 Mich 429, 434 n 6; 526 NW2d 879 (1994). If either the pleadings or the documentary evidence reveal that a party is entitled to judgment as a matter of law, the court should order judgment without delay. *Asher v Exxon Co, USA*, 200 Mich App 635, 638; 504 NW2d 728 (1993).

I.

Plaintiffs first argue that their actions for breach of contract and fraudulent concealment/innocent misrepresentation were timely filed. Both an action for breach of contract and an action for fraudulent concealment/innocent misrepresentation are governed by a six-year period of limitations. MCL 600.5807(8); MSA 27A.5807(8); MCL 600.5813; MSA 27A.5813.

The six-year period of limitations in a contract action commences to run on the date the contract was breached. *In re Easterbrook Estate*, 114 Mich App 739, 748; 319 NW2d 655 (1982).

Plaintiffs argue that there is a question of fact as to when the parties' agreement was breached. We disagree.

The contractual agreement at issue was entered into in 1982. The challenged provision provided that defendant was required to "immediately" survey out of the subject tract of land a mutually agreeable ten-acre parcel for plaintiffs' benefit. Rather than "immediately" survey out an agreeable ten-acre parcel, defendant unilaterally quitclaimed to plaintiffs a parcel of its own choosing and recorded the quitclaim deed. Defendant breached its obligation by failing to comply with the express terms of the agreement. At the latest, the breach occurred on December 3, 1982, the date the quitclaim deed was recorded. Since plaintiffs' action was filed in 1994, it is barred by the applicable six-year statute of limitations.

In a related argument, plaintiffs claim that the statute of limitations for their breach of contract action was tolled by defendant's act of fraudulently concealing the existence of the quitclaim deed. We disagree. Pursuant to statute, the limitations period for a breach of contract action may be tolled by a defendant's acts of concealing the breach for a period of two years from the date the alleged fraudulent concealment should have been discovered. MCL 600.5855; MSA 27A.5855. However, defendant did not conceal its breach. A person is charged with knowledge of the public record and recordation of a deed provides constructive notice of the disposition of the ownership of real property. *In re Farris Estate*, 160 Mich App 14, 18-19; 408 NW2d 92 (1987); *In re Crawford's Estate*, 115 Mich App 19, 26; 320 NW2d 276 (1982). Rather than conceal its breach, defendant publicly recorded the quitclaim deed. Thus, the statute of limitations was not tolled.

Plaintiffs also argue that the trial court erred in dismissing its separate claim of fraudulent concealment/innocent misrepresentation. We disagree. The six-year statute of limitations for such actions begins to run on the date the alleged fraud should have been discovered. MCL 600.5813; MSA 27A.5813; *Case v Goren*, 43 Mich App 673, 681; 204 NW2d 767 (1972); *Fagerberg v LeBlanc*, 164 Mich App 349; 416 NW2d 438 (1987).

Plaintiffs argue that the alleged acts of misrepresentation first occurred during the bargaining process when defendant induced them into entering an agreement defendant had no intention of performing. Plaintiffs also argue that the alleged concealment occurred when defendant failed to inform them of the existence of the quitclaim deed. The alleged misrepresentation and the alleged concealment should have been discovered when defendant recorded the document on the public record since recordation provided notice of the breach. The breach occurred in 1982 and plaintiffs' action was filed in 1994, well beyond the six-year statute of limitations. Therefore, the trial court properly dismissed plaintiffs' claim of fraudulent concealment/innocent misrepresentation.

II.

Plaintiffs argue that the trial court improperly dismissed its claim for rescission pursuant to the doctrine of laches. First, plaintiffs claim that defendant may not seek protection from the equitable doctrine of laches because defendant entered equity with unclean hands. We disagree.

One who seeks equity must first offer to do equity, and since laches is an equitable doctrine, a defendant with unclean hands may not assert the defense. *Atty Gen v Thomas Solvent Co*, 146 Mich App 55, 66; 380 NW2d 53 (1985). In determining whether a party entered equity with unclean hands, the primary question is whether the party seeking equity sought to mislead the other. *Isbell v Brighton Schools*, 199 Mich App 188, 190; 500 NW2d 748 (1994).

Plaintiffs' argument is merely a restatement of its action at law. Plaintiffs claim that they were misled when defendant unilaterally quit-claimed the ten-acre parcel to them. Defendant did not conceal this action in an effort to mislead plaintiffs. Rather, defendant placed its action on the public record in 1982. Therefore, defendant entered equity with clean hands and may seek protection from the doctrine of laches.

To successfully assert the defense of laches, the defendant must demonstrate that there was a passage of time combined with some prejudice to the party asserting the defense which was a result of the plaintiff's want of due diligence. *In re Crawford Estate, supra*, 115 Mich App 26.

Defendant has clearly established the passage of time since courts will refer to analogous limitations periods in determining whether laches should apply. *Badon v GMC*, 188 Mich App 430, 435; 470 NW2d 436 (1991). Plaintiffs waited over ten years to file this claim and two analogous claims at law are governed by six-year limitations periods.

Defendants have also demonstrated the requisite prejudice. Plaintiffs admit at least one material witness to the events leading up to this action has died. Further, defendant sold the subject property approximately ten years after the 1982 contract between the parties was breached. During that ten-year period, plaintiffs never objected to the quitclaim deed recorded by defendant. If plaintiffs are permitted to go forward with their claim for rescission and plaintiffs are successful, defendant could face a subsequent action by the vendees of the property. Therefore, defendant has demonstrated prejudice resulting from a passage of time occasioned by plaintiffs' want of due diligence. The trial court properly dismissed plaintiffs' claim for rescission.

III.

In summary, plaintiffs' claims for breach of contract and fraudulent concealment/innocent misrepresentation are barred by the applicable six-year statute of limitations. Further, plaintiffs' claim for rescission is barred by the equitable doctrine of laches. The trial court properly dismissed plaintiffs' complaint pursuant to MCR 2.116(C)(7).

Affirmed.

/s/ Maura D. Corrigan
/s/ Joseph B. Sullivan
/s/ Timothy G. Hicks