STATE OF MICHIGAN

COURT OF APPEALS

IRA and KENNETH TALTON, Co-Personal Representatives of the estate of RODERICK TALTON, Deceased,

Plaintiffs-Appellees,

v

VOSS AND BUCKNER, INC a Michigan Corporation, d/b/a BUCKNER FINANCE COMPANY,

Defendant-Appellant,

and

COLONY MANAGEMENT, a Michigan Corporation, Jointly and Severally,

Defendant.

UNPUBLISHED
March 14, 1997

No. 190466
Wayne Circuit Court
LC No. 94-414981-NO

Before: Jansen, P.J., and Saad and M.D. Schwartz,* JJ.

PER CURIAM.

Defendant Voss and Buckner, Inc., d/b/a Buckner Finance Company (hereafter "defendant") appeals from an order denying its motion for costs and sanctions against plaintiffs. Defendant also raises an issue regarding the circuit court's denial of its motion for summary disposition in this premises liability action. We affirm.

Defendant first contends that the circuit court erred by denying its motion for summary disposition. Defendant argues that there was no genuine issue of material fact because it was clear that it had no ownership interest in the property where the injury occurred, and therefore defendant could

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

not be held liable for negligence. We agree. The documents provided by defendant in support of its motion for summary disposition established that defendant did not have an ownership interest in the property in 1993 when the injury occurred. (Title to the property was conveyed to Colony Management by warranty deed in 1981. The subsequent issuance of a quitclaim deed did not affect this.) A grantee from a party conveying by quitclaim deed acquires the right and title which his grantor had and no other. *Brownell Realty, Inc v Kelly*, 103 Mich App 690, 695; 303 NW2d 871 (1981). At the time of issuance of the quitclaim deed, Voss & Buckner, Inc. possessed only a mortgagee interest in the property, and plaintiffs have presented no evidence to dispute this. Therefore, the mortgagee interest is all that Voss & Buckner, Inc. could have conveyed to Buckner Finance Co. when it issued the quitclaim deed in 1984. No genuine issue of material fact exists regarding defendant's lack of an ownership interest in the property. Accordingly, the circuit court erred in failing to grant summary disposition in favor of defendant.[1]

Defendant next contends that it is entitled to costs and sanctions because plaintiffs' claim against it was frivolous. We disagree. Under MCR 2.625(A)(2), "if the court finds on the motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591; MSA 27A.2591." A claim or defense is frivolous when: (1) the party's primary purpose was to harass, embarrass, or injure the prevailing party; (2) the party had no reasonable basis to believe that the underlying facts were true; or (3) the party's position was devoid of arguable legal merit. MCL 600.2591(3)(a); MSA 27A.2591(3)(a). The precise issue here is whether plaintiffs had a reasonable basis to believe that the underlying facts were true.

Pursuant to *Louya v William Beaumont Hospital*, 190 Mich App 151, 162-163; 475 NW2d 434 (1991), what the plaintiffs reasonably believed at the time they commenced the case is of critical importance. Later known facts, and a subsequent change in a party's position, are not relevant because the statute speaks to the point when the alleged frivolous action was initiated. *Id*. at 163. Here, when plaintiffs filed their action, they had reason to believe that defendant had an ownership interest in the property. Plaintiffs' inquiry at the Register of Deeds showed two deeds for the property: a warranty deed conveying the property from Voss & Buckner, Inc. to Colony Management, and a quitclaim deed which appeared to convey the property again from Voss & Buckner, Inc. to Buckner Finance Co. Because plaintiffs had a reasonable belief that defendant had an ownership interest in the property when the action was filed, the action was not frivolous and defendant was not entitled to sanctions under MCL 600.2591(3)(a)(ii); MSA 27A.2591(3)(a).

Affirmed.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Michael D. Schwartz

[1] We note that even though the circuit court erred in denying defendant's motion for summary disposition, no relief can be afforded to defendant on appeal because the action against defendant was dismissed prior to appeal.