

STATE OF MICHIGAN
COURT OF APPEALS

CHI MING CHOW,

Plaintiff-Appellant,

v

VAN BUREN TOWNSHIP,

Defendant,

and

K MART CORPORATION and
JILL FEHRENBACH,

Defendants-Appellees.

UNPUBLISHED

July 8, 1997

No. 191046

Wayne Circuit Court

LC No. 94-422740 NZ

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple*, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition on his claim for malicious prosecution against defendants K Mart Corporation and Jill Fehrenbach. This case is being decided without oral argument pursuant to MCR 7.214(E).

As reflected in this Court's opinion in *People v Chi Ming Chow* (No. 138761, June 1, 1993), plaintiff was prosecuted for larceny under \$100 under a township ordinance. For present purposes, it is accepted that the prosecution was instigated by the appellees. Plaintiff was convicted, but on appeal to circuit court obtained a new trial on grounds of ineffective assistance of counsel. This Court affirmed the circuit court's ruling, but on remand, because evidence crucial to the prosecution had been lost, the case was *nolle prosequied*.

Nonetheless, notwithstanding reversal on appeal, which was not for fraud or perjury on behalf of these appellees, the very fact of conviction conclusively establishes probable cause and thereby

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

precludes a suit for malicious prosecution. *Nawrocki v Eberhard Foods, Inc*, 24 Mich

App 646, 650-651; 180 NW2d 849 (1970).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Martin M. Doctoroff

/s/ Donald A. Teeple