

STATE OF MICHIGAN
COURT OF APPEALS

TOM J. KOVACH BUILDER, INC., a Michigan
corporation,

UNPUBLISHED
June 11, 1999

Plaintiff/Counterdefendant/Fourth-
Party Defendant-Appellee,

v

JERRY E. VOORHIES and PAULETTE
VOORHIES,

No. 202708
Livingston Circuit Court
LC No. 95-014073 CK

Defendants/Counterplaintiffs/Third-
Party Plaintiffs-Appellants,

and

RIAD KATTUAH, d/b/a LASER SURVEY, and
STANDARD FEDERAL BANK,

Third-Party Defendants/Fourth-Party
Defendants,

and

LEE DYAMENT and JENNIFER DYAMENT,

Third-Party Defendants/Fourth-Party
Plaintiffs-Appellees.

TOM J. KOVACH BUILDER, INC., a Michigan

corporation,

Plaintiff/Counterdefendant/Fourth-
Party Defendant-Appellee,

v

JERRY E. VOORHIES and PAULETTE
VOORHIES,

Defendants/CounterPlaintiffs/Third-
Party Plaintiffs-Appellees,

and

RIAD KATTUAH, d/b/a LASER SURVEY, and
STANDARD FEDERAL BANK,

Third-Party Defendants/Fourth-Party
Defendants,

and

LEE DYAMENT and JENNIFER DYAMENT,

Third-Party Defendants/Fourth-Party
Defendants-Appellants.

Before: McDonald, P.J., and Jansen and Talbot, JJ.

TALBOT, J., dissenting.

I respectfully dissent in part. In order to survive Kovach's motion for directed verdict on their claim for breach of contract resulting in loss of marketable title, the Voorhies were required to present a prima facie case of their claim. *Locke v Pachtman*, 446 Mich 216, 222; 521 NW2d 786 (1994). Quite obviously, in addition to a number of other elements, they were required to make a prima facie showing of loss of marketable title. Here, the Voorhies attorney acknowledged to the trial court that the

parties had reached an agreement to transfer title. Once the parties agreed to remove the encumbrance, title was no longer unmarketable. Although damages for the original encumbrance may have been available to the Voorhies through other causes of action, Voorhies' counsel did not amend their complaint to seek the relief proffered by the majority. I believe the trial court correctly dismissed the Voorhies' claim for loss of marketable title once the encumbrance was no longer at issue.

/s/ Michael J. Talbot