

STATE OF MICHIGAN
COURT OF APPEALS

ELGENE JOHNSON-WILSON,

Plaintiff/Counterdefendant-Appellant,

v

CHESTER STYBURSKI, PATRICIA STYBURSKI
and MICHAEL STYBURSKI,

Defendant/Counterplaintiffs-Appellees.

UNPUBLISHED

June 27, 2000

No. 211656

Genesee Circuit Court

LC No. 97-055601-CH

Before: Owens, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

On January 8, 1986, plaintiff executed a promissory note and mortgage in favor of Diamond Mortgage Company. She rescinded the transaction in a timely manner, and Diamond recorded a discharge of the mortgage. On April 21, 1986, defendants paid \$25,500 to Diamond in exchange for Diamond's right, title, and interest in a mortgage. Diamond assigned to defendants a note and mortgage on plaintiff's residence dated April 10, 1986. Plaintiff made no payments on the note or mortgage and, in July 1993, defendants notified plaintiff that she was in default.

Plaintiff filed suit to quiet title, claiming that Diamond redated the original, rescinded mortgage and assigned it to defendants without her knowledge or permission. Defendants filed a counterclaim for foreclosure. Defendants moved for summary disposition, arguing that they were bona fide purchasers/holders in due course of the note and mortgage and that any defenses plaintiff had against Diamond did not apply to them. The trial court granted the motion, finding that no genuine issue of fact existed regarding defendants' status as bona fide purchasers/holders in due course of the note and mortgage.

Plaintiff argues that the trial court erred by granting defendants' motion for summary disposition. We disagree. Defendants submitted evidence demonstrating that they were holders in due course of the note and mortgage for plaintiff's property. MCL 440.3302(1); MSA 19.3302(1). Although plaintiff

argued that defendants were not holders in due course because the witnesses' signatures on the April mortgage document were forged,¹ plaintiff failed to produce competent evidence to factually support this claim.² Although the trial court gave plaintiff the opportunity to procure an affidavit from her handwriting expert, she failed to do so and did not provide an explanation as to why one could not be obtained. See MCR 2.116(H). Plaintiff failed to submit affidavits or other documentary evidence to oppose the motion as required by MCR 2.116(G)(4). The unsworn letter from the purported handwriting examiner was insufficient to create an issue of fact because it constituted a hearsay statement of opinion. *SSC Associates Ltd Partnership v General Retirement System of Detroit*, 192 Mich App 360, 367; 480 NW2d 275 (1991). Plaintiff did not present sufficient admissible evidence from which the trial court could conclude that a genuine issue of fact existed regarding defendants' status as bona fide purchasers/holders in due course.

Furthermore, plaintiff did not establish the defense of fraud in the execution. As bona fide purchasers/holders in due course, defendants were under no obligation to inquire regarding the validity of the underlying transaction if the negotiable instruments were valid on their faces. *Mox v Jordan*, 186 Mich App 42, 47; 463 NW2d 114 (1990); *Thomas v State Mortgage, Inc.*, 176 Mich App 157, 165; 439 NW2d 299 (1989). Plaintiff presented no admissible evidence to create an issue of fact regarding whether the April 1986 note and mortgage were obtained through fraud in the execution. Hence, summary disposition was properly granted.

Affirmed.

/s/ Donald S. Owens

/s/ Janet T. Neff

/s/ E. Thomas Fitzgerald

¹ See MCL 440.3302(1)(a); MSA 19.3302(1)(a), which provides that one cannot be a holder in due course where the instrument at issue bears apparent evidence of forgery, calling into question the instrument's authenticity.

² On appeal, plaintiff does not dispute that defendants are bona fide purchasers/holders in due course.