

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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AZIZ F. NASER and JUDY AZIZ NASER,

Plaintiffs-Appellees,

v

RANDY L. BENOIT, d/b/a RLB DRYWALL,

Defendant-Appellant.

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UNPUBLISHED  
October 10, 2000

No. 214471  
Oakland Circuit Court  
LC No. 98-005390-CH

Before: McDonald, P.J., and Sawyer and White, JJ.

PER CURIAM.

Defendant appeals as of right from the circuit court's order denying his motion for summary disposition and granting summary disposition in favor of plaintiffs. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant filed suit in 45-B District Court in October 1992 to obtain payment for work performed at the home of Majid and Titiya Kallabat. Titiya Kallabat then conveyed the property to her son, Basil Kallabat, for no consideration. On December 24, 1992, Basil Kallabat obtained a loan that was secured by a mortgage granted to Pacific World Mortgage Company (Pacific).

Defendant filed a motion in district court to set aside the conveyance to Basil Kallabat on the ground that it was fraudulent. It does not appear that the mortgage holder was notified of the motion. On December 27, 1994, defendant filed a lis pendens on the property.

Eventually, the mortgage was assigned to State Street Bank & Trust Company. On May 30, 1995, the property was foreclosed and sold by sheriff's deed to State Street. The deed was recorded on that date. The property was not redeemed.

On April 12, 1996, the district court granted defendant's motion to set aside the conveyance to Basil Kallabat on the ground that it was fraudulent. MCL 566.16; MSA 26.886. That order was recorded on July 15, 1996. On September 10, 1996, defendant filed a notice of levy on the property.

On September 9, 1997, plaintiffs purchased the property from State Street. Subsequently, they filed suit to quiet title, asserting that their interest was superior to that claimed by defendant in that their

title was derived intermediately from Pacific, which acquired its interest for fair consideration and without knowledge of any fraud. Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that because Basil Kallabat's original interest in the property was subject to his equitable claim, all subsequent interests, including plaintiffs', were subject to the claim. The circuit court denied defendant's motion and granted summary disposition in favor of plaintiffs pursuant to MCR 2.116(I)(2), finding that at the time Pacific obtained the mortgage, defendant had no claim on the property under the Construction Lien Act, MCL 570.1101 *et seq.*; MSA 26.316(101) *et seq.*, because he had not filed a lien.

We review a circuit court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Michigan's recording acts, MCL 565.1 *et seq.*; MSA 26.521 *et seq.*, provide in pertinent part:

Every conveyance of real estate within the state hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded. [MCL 565.29; MSA 26.547.]

A mortgage of lands is a conveyance within the meaning of the recording acts, MCL 565.35; MSA 26.552.<sup>1</sup> *Stover v Bryant & Detwiler Improvement Corp*, 329 Mich 482, 484; 45 NW2d 364 (1951). MCL 565.34; MSA 26.551 provides that the term "purchaser" "shall be construed to embrace every person to whom any . . . interest in real estate, shall be conveyed for a valuable consideration, and also every assignee of a mortgage . . ." A mortgagee is a "purchaser" under the recording acts. See *Lowry v Lyle*, 226 Mich 676; 198 NW 245 (1924); see also *Atwood v Bears*, 45 Mich 469; 8 NW 55 (1881), in which the Court held that a person who purchased at an execution sale became a purchaser within the meaning of the predecessor statute to MCL 565.34, MSA 26.551, even though she had not yet received a sheriff's deed. Until actual or constructive notice is shown by the party asserting it, there is a presumption that a subsequent purchaser who first recorded his deed is a bona fide purchaser for value. See *Ooley v Collins*, 344 Mich 148, 158-159; 73 NW2d 464 (1955); *Harr v Coolbaugh*, 337 Mich 158, 162; 59 NW2d 132 (1953). "Once a bona fide purchaser for value enters the chain of title, the purchaser establishes a new chain, and persons who take from the purchaser take good title even though they may have notice of a claim against the property that is contrary to their grantor." I, Cameron, Michigan Real Property Law, §11.28, citing *Shotwell v Harrison*, 22 Mich 410 (1871), and *Godfrey v Disborow*, 1 Walk Ch 260 (1843); see also *Michigan*

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<sup>1</sup> MCL 565.35; MSA 26.552 provides in pertinent part:

The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, by which any estate or interest in real estate is created, aliened, mortgaged or assigned; or by which the title to any real estate may be affected in law or equity, except wills, leases for a term not exceeding 3 years, and executory contracts for the sale or purchase of lands.

*Nat'l Bank v Morren*, 194 Mich App 407, 410-411; 487 NW2d 784 (1992) (noting that a mortgagee who had notice of a prior, unrecorded mortgage on subject property could not be a good faith purchaser under race-notice statute, and his knowledge, being imputed to his estate, precluded the estate from being a good faith purchaser).

At pertinent times, MCL 566.19; MSA 26.889<sup>2</sup> provided in relevant part:

(1) Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediately from such purchaser;

(a) Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim, or

(b) Disregard the conveyance and attach or levy execution upon the property conveyed.

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When Pacific, a mortgagee, acquired the mortgage on the property on December 24, 1992, defendant had no interest in the property. Pacific was a bona fide purchaser for value. *Ooley, supra*; *Harr, supra*; MCL 565.34; MSA 26.551. Defendant's act of filing a lis pendens on December 27, 1994 did not serve to convey any interest in the property. MCL 565.35; MSA 26.552. The redemption period expired before the recording of the order granting defendant's motion to set aside the conveyance to Basil Kallabat as fraudulent. Upon expiration of the redemption period, State Street took the legal title Basil Kallabat held on December 24, 1992, the date the mortgage was initially conveyed. MCL 600.3236; MSA 27A.3236. That title was unencumbered by any claim of defendant. Plaintiffs derived title mediately from Pacific, a purchaser for value without knowledge of the fraud, and immediately from State Street.

Summary disposition was properly granted in plaintiffs' favor.

Affirmed.

/s/ Gary R. McDonald

/s/ David H. Sawyer

/s/ Helene N. White

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<sup>2</sup> This statute was repealed effective December 30, 1998.