

STATE OF MICHIGAN
COURT OF APPEALS

EVEANN PROPERTIES, INC.,

Plaintiff-Appellee,

v

ERNEST V. PONTI and DELORES PONTI,

Defendants-Appellants.

UNPUBLISHED

December 12, 2000

No. 213383

Wayne Circuit Court

LC No. 96-627929-CH

Before: Fitzgerald, P.J., and Holbrook, Jr. and McDonald, JJ.

PER CURIAM.

In this quiet title action, defendants Ernest and Delores Ponti appeal as of right the trial court's order granting summary disposition in favor of plaintiff Eveann Properties, Inc. pursuant to MCR 2.116(C)(10). We reverse.

Defendants, who are husband and wife, owned the real property located in the city of Taylor that is the subject of this law suit. Defendants failed to pay property taxes assessed for the year 1986. As a result, the state of Michigan acquired a tax lien against the property. MCL 211.40; MSA 7.81. Because the taxes remained unpaid for three years, the state's lien was offered for sale to private bidders at the 1989 annual tax sale. MCL 211.60; MSA 7.104. However, no private bidder purchased the lien, and it was automatically bid to the state pursuant to MCL 211.70; MSA 7.115.

Under MCL 211.67; MSA 7.112, when the first redemption period expired on the first Tuesday in May 1990, absolute title to the property vested in the state. In accordance with MCL 211.67a; MSA 7.112(1), the Michigan Department of Treasury issued a deed transferring title to the property to the state of Michigan on June 1, 1990. The second redemption period expired on the first Tuesday of November 1990. MCL 211.131c; MSA 7.190(1). According to the parties, the state deeded the property to the Michigan Department of Natural Resources (DNR) sometime during 1991.

On January 7, 1992, defendant Delores Ponti filed for personal bankruptcy under Chapter 13 of the United States Bankruptcy Code, 11 USC 1301 *et seq.* At that time, a right to redeem the property still remained because there had been no show cause hearing held before the Department of Treasury, which is required by MCL 211.131e(2); MSA 7.190(3)(2). Under § 131e, the redemption period is extended until "owners of a significant property interest" in the

property have been notified of the show cause hearing. Moreover, there is a final opportunity to redeem the property within the thirty days following the show cause hearing. MCL 211.131e(3); MSA 7.190(3)(3).

On June 18, 1992, defendant Delores Ponti received notice that a § 131e show cause hearing would be held before the Department of Treasury July 13, 1992. The parties dispute whether defendant Ernest Ponti also received notice of the hearing. In any event, neither defendant appeared at the hearing, which was held as scheduled. The DNR later executed a quitclaim deed on August 23, 1995 conveying the property to plaintiff Eveann Properties, Inc. Plaintiff then filed this action to quiet title to the property on May 31, 1996.

In their answer to plaintiff's complaint, defendants challenged the state's title to the property, claiming that the state improperly proceeded against the property while defendant Delores Ponti was in bankruptcy. Specifically, defendants alleged that holding the § 131e show cause hearing violated the automatic stay provision of the Bankruptcy Code, 11 USC 362.¹

Plaintiff moved for summary disposition under MCR 2.116(C)(10), arguing the show cause hearing provided for under MCL 211.131e; MSA 7.190(1) was in essence an act to perfect the state's tax lien and was therefore excluded from the automatic stay provisions of 11 U.S.C. 362(a). The trial court granted plaintiff's motion, finding that the show cause hearing was an "act to perfect an interest in property" and therefore was permitted under 11 USC 362(b)(3) and 11 USC 546(b).

Defendants first argue the trial court erred in reaching this conclusion and granting summary disposition in favor of plaintiff. We agree.

This Court reviews a decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support for a plaintiff's claim. *Id.* The court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted in the action to determine whether a genuine issue of any material fact exists to warrant a trial. *Id.* An appellate court must make all reasonable inferences in the nonmoving party's favor. *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 618; 537 NW2d 185 (1995).

Section 362(a) of the Bankruptcy Code provides that the filing of a petition for bankruptcy "operates as a stay, applicable to all entities, of the commencement or continuation [of an action] or proceeding against the debtor that was or could have been commenced before the commencement of [bankruptcy proceedings.]" See also *Lopez v Lopez*, 191 Mich App 427, 428; 478 NW2d 706 (1991). The purpose of the automatic stay is to preserve the status quo of the debtor's estate in an effort to effectuate a successful reorganization or liquidation. *Stackpoole v Dep't of Treasury*, 194 Mich App 112, 116; 486 NW2d 322 (1992). The stay protects the debtor from collection efforts or foreclosure actions and protects creditors to the extent that there

¹ Defendant's other claims are not relevant here because we find the automatic stay provision issue dispositive.

is an orderly liquidation proceeding by which all creditors of equal status are treated the same. *Id.*

In *In re Tranter*, 171 BR 256, 260 (WD Mich, 1994), the United States Bankruptcy Court for the Western District of Michigan held that hearings pursuant to MCL 211.131e; MSA 7.190(3) clearly “constitute the continuation of a proceeding” within the meaning of subsection 362(a) and are therefore violations of the automatic stay. Although the trial court recognized this, it nonetheless addressed the application of subsections 362(b)(3) and subsection 546(b)(1)(A), which had not been raised by the parties.

Subsection 362(b)(3) provides that the stay provided for under subsection 362(a) is inapplicable to “any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee’s rights and powers are subject to such perfection under section 546(b) of this title” Subsection 546(b)(1)(A) subordinates the trustee’s rights and powers to “any generally applicable law [which] permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection.” The trial court found that the show cause hearing was in essence an act of perfection of the state’s interest because it was the last necessary step for the state to acquire clear title to the property. The trial court reasoned that to perfect means to “complete” or “finish,” and that “[t]he post-petition hearing at issue here would certainly seem to constitute something to ‘complete’ or ‘finish’ the state’s lien” by perfecting its title to the property.” The court then concluded that inasmuch as the state’s interest in the property [i.e., the tax lien] arose pre-petition, this perfection would relate back via subsection 546(b)(1)(A) to a date before the filing of the bankruptcy petition, thereby removing the state’s actions from the prohibitions of the automatic stay.

The trial court’s reasoning fails to recognize that the state is not perfecting its interest in the property by holding the § 131e show cause hearing. At that point in the proceedings, the state no longer has a lien, but instead holds title to the property. See MCL 211.67; MSA 7.112; *Detroit v Adamo*, 234 Mich App 235, 237; 593 NW2d 646 (1999). Accordingly, subsection 546(b)(1)(A) is simply inapplicable to the present situation, and the bankruptcy filing stayed the required notice and hearing. See *Tranter*, *supra* at 260.

However, defendants are mistaken in their assertion that the state “was never in a position to sell the property” to plaintiff. Instead, we hold that the state never extinguished defendants redemption rights to the property. In order to extinguish defendants redemption rights to the property, there must be a show cause hearing held, with proper notice given, and a final opportunity to redeem within the thirty days following the hearing. *Adamo*, *supra* at 238. The trial court erred in quieting plaintiff’s title to the property while defendants still retained the right to redeem the property.

Plaintiff suggests that the fact that the bankruptcy action was dismissed at some point after the show cause hearing but before it received its quitclaim deed to the property somehow affects the result of this case. We reject this suggestion. It is undisputed that the automatic stay was in effect at the time of the show cause hearing and there is no evidence that another show cause hearing was held after the dismissal of the bankruptcy action.

In light of our conclusion on this issue, it is unnecessary to address defendants other arguments on appeal.

Reversed.

/s/ E. Thomas Fitzgerald

/s/ Donald E. Holbrook, Jr.

/s/ Gary R. McDonald