STATE OF MICHIGAN

COURT OF APPEALS

SOUTH SHORES CONDOMINIUM ASSOCIATION,

Plaintiff-Appellant,

v

BURTON R. SHIFMAN, SUZANNE K. SHIFMAN, SHAMIE BUILDERS, INC., JOHN RICHARDS PINE LAKE INC., doing business as PINE LAKE ASSOCIATES, NBD BANK, and JOHN RICHARDS BLOOMFIELD CORPORATION,

Defendant-Appellees.

UNPUBLISHED
December 18, 2001

No. 225814
Oakland Circuit Court
LC No. 99-013847-CH

Before: Meter, P.J., and Jansen and Gotham*, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting reconsideration and imposing sanctions of attorney fees and costs pursuant to MCR 2.114(E). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed suit to recover what it claimed were delinquent condominium association fees on lots 7 and 8 in the South Shores Estates on Pine Lake, a residential condominium development located in West Bloomfield. Plaintiff contended that the Shifmans were "co-owners" because a title search revealed warranty deeds in which a third party conveyed lots 7 and 8 to Burton Shifman. Both deeds were dated April 24, 1990, but the deed for lot 7 was recorded on May 3, 1990, and the deed for lot 8 was not recorded until May 16, 1990. A second set of warranty deeds also existed in which Burton Shifman conveyed lots 7 and 8 to defendant Pine Lake Associates. These deeds were both dated October 7, 1989, and were recorded May 3, 1990.

Defendants Shifman moved for summary disposition, arguing that at no time relevant to the proceedings were they the owners of the lots. Plaintiff contended that the last deed recorded was determinative of ownership. However, defendants pointed out that under the doctrine of after-acquired title, any interest Shifman acquired in the properties automatically passed to Pine

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

Lake Associates by virtue of Shifman's previous conveyances by warranty deeds. The trial court agreed and granted the motion, dismissing with prejudice the portion of the complaint against the Shifmans.

Shortly thereafter, the Shifmans moved for sanctions pursuant to MCR 2.114(E), arguing that the complaint was signed in violation of MCR 2.114(D), which requires an attorney to conduct a reasonable inquiry prior to signing a document that would justify the belief that "the document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." The trial court denied the motion.

Defendants then moved for reconsideration, pointing out that attached to the complaint were mortgages on the properties taken out by Pine Lake Associates in which Pine Lake covenanted that it was the owner of the properties. Defendants asserted that Pine Lake Associates had always paid all the real estate taxes on the properties and that all assessments sent out by plaintiff were sent to Pine Lake Associates. They also contended that, even under plaintiff's unsupported theory that the last recorded deed is determinative of ownership, the last recorded deed to lot 7 clearly showed that Pine Lake Associates was the owner. Thus, defendants argued that even the most minimal investigation would have revealed that they were not the owners of the parcels.

The trial court granted reconsideration and reversed itself, finding that the complaint had been signed in violation of the court rule. The court imposed sanctions of $5,000 in attorney fees and costs. Plaintiff then filed this claim of appeal pursuant to MCR 7.203(A)(4), arguing that the court clearly erred in finding that its claim was devoid of legal merit.

Any paper filed with the court may result in sanctions if it is improperly signed in violation of MCR 2.114. *Kitchen v Kitchen*, 231 Mich App 15, 21; 585 NW2d 47 (1998), lv granted 463 Mich 969 (2001). A trial court's finding that a claim is frivolous or vexatious is reviewed for clear error. *Stablein v Schuster*, 183 Mich App 477, 483; 455 NW2d 315 (1990).

The trial court did not clearly err in finding that plaintiff's claim was devoid of arguable legal merit and that plaintiff's attorneys signed the complaint without making a reasonable inquiry into the facts and law. MCL 125.2453(4) provides that "record owner" means "a person possessed of the most recent fee title." Plaintiff has cited no authority whatsoever for the proposition that "record owner" means the grantee on the last recorded deed. At the time Burton Shifman conveyed lots 7 and 8 to Pine Lake Associates, he had not yet acquired title of the properties from the former owners. Shifman's subsequent acquisition of the properties gave effect to the previous deed because it was a warranty deed. As the Supreme Court explained in *Smith v Williams*, 44 Mich 240, 242; 6 NW 662 (1880):

> Where one assumes by his deed to convey a title, and by any form of assurance obligates himself to protect the grantee in the enjoyment of that which the deed purports to give him, he will not be suffered afterwards to acquire or assert a title and turn his grantee over to a suit upon his covenants for redress. The short and effectual method of redress is to deny him the liberty of setting up his after-acquired title, as against his previous conveyance. This is merely refusing him the countenance and assistance of the courts in breaking the assurance which his covenants have given. [*Id*; see also *Dye v Thompson*, 126

Mich 597, 599; 85 NW 1113 (1901); *Morris v Jansen*, 99 Mich 436; 58 NW 365 (1894); Deeds, 23 AmJur2d § 341, pp 301-302.]

Thus, the doctrine of after-acquired title rendered Pine Lake Associates the record owner of the properties at all times relevant to these proceedings. Plaintiff cites no authority in support of its claim that the doctrine of after-acquired title does not apply in this case but simply claims that the law is in doubt because it is old. There is no ground for disregarding established precedent solely on the basis of its age, particularly in the absence of any more recent case law in conflict.

Moreover, the fact that Pine Lake Associates had taken out substantial mortgages on the properties and paid the taxes on them should have alerted plaintiff's attorneys to the fact that the Shifmans were not the owners, particularly in light of the fact that both mortgages contained covenants in which Pine Lake Associates averred that it was the owner of the mortgaged property. Finally, the assessment notices sent out by plaintiff itself were consistently addressed to Pine Lake Associates. Accordingly, we find no clear error in the trial court's conclusion that plaintiff's attorneys failed to make a reasonable inquiry into the facts before filing suit and had no reasonable basis for believing that the suit against the Shifmans was warranted.

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Roy D. Gotham