STATE OF MICHIGAN

COURT OF APPEALS

RALPH SACHS,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED
April 13, 2004

No. 245234
Wayne Circuit Court
LC No. 01-135881-CH

RALPH SACHS,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

No. 246245
Wayne Circuit Court
LC No. 01-115581-CH

Before: Talbot, P.J., Neff and Donofrio, JJ.

PER CURIAM.

In Docket No. 245234, plaintiff appeals as of right the circuit court's order granting defendant's motion for summary disposition in an action brought after plaintiff defaulted under a land contract and the city sent plaintiff notices of forfeiture and subsequently demolished the vacant dwelling on the property. In Docket No. 246245, plaintiff appeals as of right the circuit court's order granting the city's motion for summary disposition in a separate action brought after the city demolished a vacant commercial building plaintiff purchased from a tax sale but failed to repair. We consolidated the cases on appeal. We affirm.

I. Standard of Review

The city brought its motions for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). Because the trial courts looked beyond the pleadings, we conclude that the motions were determined under MCR 2.116(C)(10). "This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). In deciding a motion for

summary disposition under MCR 2.116(C)(10), the court considers affidavits, pleadings, depositions, admissions, and all other documentary evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the nonmoving party. If the evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

II. Analysis

A. Docket No. 245234

Plaintiff argues that the city could not effect a forfeiture of property subject to a land contract by submitting the required notices of intent of forfeiture and of forfeiture and that the city was required to pursue summary proceedings or a foreclosure action to recover possession.

In support of his argument, plaintiff relies on the decision in *Gruskin v Fisher*, 405 Mich 51; 273 NW2d 893 (1979). *Gruskin* held that sending notice of forfeiture was insufficient and that "[t]he seller must, rather, send the notice as a condition precedent to commencement of summary proceedings." *Id*. at 65-66. However, this Court has expressly declined to read the *Gruskin* holding broadly. In *Day v Lacchia*, 175 Mich App 363, 374; 437 NW2d 400 (1989), this Court rejected the argument that *Gruskin* requires use of summary proceedings to declare a forfeiture. In *Day*, the defendant was not in physical possession of the vacant land when his rights were declared forfeited pursuant to the terms of the land contract. *Id*. The property stood vacant and, despite violation notices from the municipality, the plaintiffs failed to make the necessary repairs, maintaining they were not entitled to possession of the property. The plaintiffs also failed to make their land contract payments and had not paid taxes and insurance on the property as required by the terms of the land contract. *Id*. at 368.

Similarly, in this case, the city was not required to institute summary proceedings or a foreclosure action where it is undisputed that plaintiff defaulted on the land contract and failed to keep and maintain the property in as good condition as it was on the date of the land contract. Plaintiff failed to rebut the city's evidence that the property was vacant at the time it sent the notices of intent of forfeiture and of forfeiture on September 14, 1995, October 10, 1995 and March 15, 1996. Further, the record does not indicate that plaintiff responded to the three notices. Under these circumstances, and in light of the holding in *Day*, the city was allowed to resort to self help. Thus, plaintiff's interest in the property was forfeited in 1996.

Plaintiff next relies on the decision in *Collins v Collins*, 348 Mich 320; 83 NW2d 213 (1957), and asserts that the city's three-year inaction between the notice of forfeiture in 1996, and the act of demolition in 1999, served as a form of acquiescence to plaintiff's default on the land contract and thus, new forfeiture proceedings must take place. Plaintiff's reliance on *Collins* is misplaced. In *Collins*, our Supreme Court held that the plaintiffs had not abandoned the property because, while they defaulted on payments, they had paid all the taxes and assessments on the land; kept the land adequately insured, made valuable improvements, and occupied the dwelling, farmed the land, sold the timber from the land, and collected all rents. *Id*. at 327. In this case, there is nothing to establish that plaintiff paid taxes, kept the premises in as good condition as he received it under the land contract, made any improvements, or even was in possession of the premises. Accordingly, we conclude that the decision in *Day* is controlling and

the city was allowed to resort to self help to declare the property forfeited. Plaintiff had no interest in the property when the dwelling was subsequently demolished.

Plaintiff next argues that the trial court incorrectly ruled that the affidavits he submitted to establish that the dwelling was not dangerous at the time it was demolished failed to created a genuine issue of material fact to survive summary disposition. Plaintiff's argument is without merit because plaintiff's interest in the dwelling was forfeited at the time the actual demolition took place. Therefore, any documentary evidence plaintiff may have provided with respect to the condition of the dwelling at the time it was demolished would not create a genuine issue of material fact to survive summary disposition.

Plaintiff finally raises in Docket No. 245234, a claim of governmental immunity that is not properly before this Court. The issue of governmental immunity was not raised or asserted in this case, and we decline to address it.

B. Docket No. 246245

In Docket No. 246245, plaintiff argues that the trial court failed to consider the theory of inverse condemnation in determining whether to grant the city summary disposition. This issue is not properly before this Court. Jurisdiction over the issue was retained by the federal district court and was not part of the summary disposition proceedings below. Accordingly, we do not address it.

Plaintiff next argues that plaintiff maintains that the affidavit he submitted in opposition to summary disposition to establish that the commercial building was not dangerous at the time it was demolished created a genuine issue of material fact to survive summary disposition.

The documentary evidence presented by the city established that, on July 14, 1998, the city re-inspected the commercial building and found that it was still in disrepair and open to trespass. The building was in such a deteriorated condition that it warranted the Buildings and Safety Engineering Department to recommend an emergency demolition because the building presented an "immediate danger affecting public health, safety and welfare." Accordingly, the city declined plaintiff's request to rescind the order of demolition. On July 21, 1998, the Department of Public Works received a letter from the city indicating that the commercial building was "extensively fire damaged and structurally unsafe," "dilapidated with extensive structural damage to the point of collapse," and "recently found to be the site of illicit and immoral acts and an imminently attractive nuisance." On August 5, 1998, the city's Buildings and Safety Engineering Department recommended that the Detroit City Council deny plaintiff's demolition deferral request and to institute an emergency demolition. A copy of the recommendation letter was sent to plaintiff. On August 14, 1998, plaintiff acknowledged receipt of the August 5, 1998, letter, and he notified the city that the building was secure from trespass. He requested the city to re-inspect the premises and cancel the demolition. The record does not establish that the city reinspected the premises. Rather, it declined plaintiff's latest request.

In rebuttal to the city's evidence, plaintiff submitted only one affidavit, that of Nathan Harvey, who attested that the commercial building was structurally adequate for rehabilitation and that "[i]mmediate repairs would include the resupporting of an existing beam and the rebuilding of the fire damaged 2nd floor." Harvey did not specify when he inspected the

building.[1] We conclude that there is nothing in the affidavit that rebuts the city's claim that the building was dangerous at the dates it inspected the premises and on the date the premises was demolished.

Plaintiff finally asserts that "[c]ontrary to the claim of the defendant City, a municipality is not immune from claims of intentional trespass and waste." This sentence constitutes plaintiff's argument in its entirety. Plaintiff only presents a few paragraphs reciting the law pertaining to trespass claims. Plaintiff does not apply the trespass law to the facts in this case. He does not even assert that his claim for trespass has merit. Plaintiff did not address either below or on appeal the city's argument that it acted within its police power and pursuant to the procedures set forth in the city's ordinances to eradicate an unsafe and dangerous building. Importantly, plaintiff does not even assert in this issue that the building was not dangerous and he does not even mention the waste claim in the analysis section of the brief. Accordingly, we do not address this issue. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Affirmed.

/s/ Michael J. Talbot
/s/ Janet T. Neff
/s/ Pat M. Donofrio

[1] In his affidavit, Harvey did not identify his occupation. However, in an affidavit submitted in Docket No. 24534, Harvey attested that he was licensed architect.