STATE OF MICHIGAN

COURT OF APPEALS

RICK DAVID KRAMER and SUSAN MARIE KRAMER, Plaintiffs, v MICHAEL J. WOODRUFF, Defendant/Third Party Plaintiff-Appellee. v CREI, INC., Third Party Defendant-Appellant.	UNPUBLISHED June 22, 2004 No. 249179 Mason Circuit Court LC No. 01-000079-CH

Before: Sawyer, P.J., Gage and Owens, JJ.

PER CURIAM.

CREI, Inc.,[1] appeals as of right an order, following a bench trial, granting Michael Woodruff $9,231 in attorney's fees. The underlying suit arose when Rick David Kramer and Susan Marie Kramer filed suit to quiet title to a portion of lakefront property purchased by Woodruff from CREI after Woodruff removed their dock and placed it in their yard. Woodruff then filed a third-party claim against CREI for damages and attorney's fees associated with his defense. We affirm in part, reverse in part, and remand for determination of damages.

CREI first argues that it had no duty to disclose the adverse possession claim. We disagree.

[1] The plaintiffs/counter-defendants in the underlying suit were Rick David Kramer and Susan Marie Kramer. Michael J. Woodruff was the defendant/counter-plaintiff. In addition, Woodruff filed a third-party claim against CREI, Inc., for damages. To dispel confusion, all parties will be referred to by their actual names.

In a quiet title action, a court's findings of fact are reviewed for clear error, while its conclusions of law are reviewed de novo. *Killips v Mannisto,* 244 Mich App 256, 258; 624 NW2d 224 (2001). This same standard of review is applied to a court's findings and conclusions in a bench trial. *Walters v Snyder,* 239 Mich App 453, 456; 608 NW2d 97 (2000). "'[W]here the truth has been suppressed with the intent to defraud,'" an action may be maintained for silent fraud. *Lorenzo v Noel,* 206 Mich App 682, 684; 522 NW2d 724 (1994). However, mere nondisclosure, absent a legal duty to disclose, is not sufficient to maintain a claim for silent fraud. *Hord v Environmental Research Institute of Michigan (After Remand),* 463 Mich 399, 412; 617 NW2d 543 (2000). See also *M&D, Inc v McConkey,* 231 Mich App 22, 29; 585 NW2d 33 (1998). A legal duty to disclose arises if a defendant replies to an inquiry in a manner that may be a truthful statement but omits material information. *Hord, supra* at 412; *M&D, Inc, supra* at 29.

At trial, Woodruff testified that he asked the real estate agent how much lake frontage there was and about the "no trespassing" signs posted along the disputed strip. This indicated that a direct inquiry was made with respect to ownership of the strip. The agent replied that there was 512 feet of lake frontage, and Woodruff would own the "no trespassing" signs. Although the agent's reply was a truthful statement, it omitted the fact that the Kramers had posted the signs and claimed a prescriptive easement over the parcel. Therefore, Woodruff submitted evidence showing that a duty existed. *Hord, supra* at 412; *M&D, Inc, supra* at 29. Moreover, this same evidence established that CREI breached its duty. *"'The gist of [a silent fraud action] is fraudulently producing a false impression upon the mind of the other party.'" M&D, Inc, supra* at 31, quoting *Wolfe v A E Kusterer & Co,* 269 Mich 424, 427-428; 257 NW 729 (1934) (Emphasis in *M&D, Inc, supra*). And Woodruff demonstrated that he relied on this false impression when he testified that the agent convinced him to purchase parcel D along with parcel C, and he would not have purchased parcel D had he been aware of the claim against it.

Nevertheless, the court did not determine that a duty to disclose existed as a result of Woodruff's questions; instead the court found that a party, having knowledge of information that the other side does not, has a duty to disclose that information. The court's finding was erroneous. "[T]here is no general inchoate duty to disclose all hidden defects." *M&D, Inc, supra* at 30. Still, where a trial court reaches the correct result, its ruling will be affirmed despite the fact that the result was reached for the wrong reason. *Gleason v Dep't of Transportation,* 256 Mich App 1, 3; 662 NW2d 822 (2003).

Defendant next argues that the trial court improperly awarded attorney's fees as damages. We agree.

A court's decision to award attorney fees is reviewed for an abuse of discretion. *HA Smith Lumber & Hardware Co v Decina,* 258 Mich App 419, 429; 670 NW2d 729 (2003); *Walch v Crandall,* 164 Mich App 181, 193; 416 NW2d 375 (1987). "Attorney fees are not recoverable unless expressly allowed by statute, court rule, or judicial exception." *HA Smith Lumber, supra* at 429. A common-law exception exists where the plaintiff incurred attorney fees in a previous litigation with a third party as a result of the defendant's wrongful conduct. *Grace v Grace,* 253 Mich App 357, 371; 655 NW2d 595 (2002). However, the wrongful conduct must cause the litigation. *Id; Bonner v Chicago Title Ins Co,* 194 Mich App 462, 469; 487 NW2d 807 (1992). Because CREI did not cause the litigation between the Kramers and Woodruff, CREI

should not have been held responsible for Woodruff's attorney fees. *Grace, supra* at 371*; Bonner, supra* at 469.

Woodruff argues alternatively that attorney's fees were awardable as an expense incident to removal:

> "If the encumbrance is practically inextinguishable, as in the case of a permanent easement, the measure of damages is the difference in the value of the land without and with the encumbrance; but where the easement has been extinguished, the measure of damages is the injury sustained between the date of the deed and the removal of the encumbrance together with the expense incident to such removal." [*Reed v Rustin,* 375 Mich 531, 534; 134 NW2d 767 (1965), quoting 61 ALR p 182.]

However, while the Supreme Court cited the previous passage, its actual holding was:

> "[A] covenant against encumbrance is breached, when made, if at all, and, therefore, the measure of damages for breach of covenant against encumbrance is the difference between the actual or fair market value of the premises with the encumbrance and what said value would have been had there been no encumbrance on the date of the conveyance." [*Reed, supra* at 535.]

Therefore, the Supreme Court rejected the portion with respect to extinguishable easements, and instead found that damages were the difference in the land's value with the easement and its value without the easement regardless whether the easement was extinguishable. We therefore remand to determine the difference in property value. Although CREI argued that the difference in property value was negligible, it rejected an offer by the Kramers to purchase the disputed parcel for $5,000, and instead sought $1,000 a foot for the lake frontage. While clearly ownership in fee is worth more than a mere easement, see *Dobie v Morrison,* 227 Mich App 536, 540; 575 NW2d 817 (1998), this would indicate that the value of the easement was not negligible as claimed.

Affirmed in part, reversed in part, and remanded to determine damages.

/s/ David H. Sawyer
/s/ Hilda R. Gage
/s/ Donald S. Owens