

STATE OF MICHIGAN  
COURT OF APPEALS

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ROBERT JAMES BLAHA, JR.,

Plaintiff-Appellee,

v

FAUPEL & ASSOCIATES, P.C.,

Defendant-Appellant.

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UNPUBLISHED  
December 2, 2004

No. 250241  
Washtenaw Circuit Court  
LC No. 02-001089-CH

Before: Donofrio, P.J., and Markey and Fort Hood, JJ.

PER CURIAM.

Defendant appeals by leave granted from the trial court's order granting a permanent injunction. We affirm.

Defendant represented plaintiff's spouse in divorce proceedings and obtained a mortgage on the marital residential property, titled in the name of the spouse only, to secure payment of attorney fees. The consent judgment of divorce awarded plaintiff the marital home "free and clear" of any claim by his ex-wife. The judgment also provided that each party "shall pay their own attorney fees and costs." Defendant did not receive payment from plaintiff's ex-wife. Seven years after the divorce was finalized, defendant advertised the mortgage foreclosure of plaintiff's home because of the nonpayment of attorney fees by his ex-wife. The trial court granted plaintiff's request for a permanent injunction to prevent the foreclosure.

The decision to grant injunctive relief is reviewed for an abuse of discretion, with the factual findings sustained unless they are clearly erroneous. *Pharmaceutical Research & Manufacturers v Dep't of Community Health*, 254 Mich App 397, 402; 657 NW2d 162 (2002). On this record, we cannot conclude that the trial court's decision was an abuse of discretion. Defendant contends that collection from plaintiff through foreclosure is appropriate pursuant to *George v Sandor M Gelman, PC*, 201 Mich App 474, 506 NW2d 583 (1993). In *George*, this Court held that an attorney's charging lien for fees may not be imposed upon a client's real estate, unless: (1) the parties have an express agreement providing for the lien; (2) the attorney obtains a judgment for the fees and follows the proper enforcement procedures for the judgment; or (3) special equitable circumstances exist to warrant imposition of a lien. *Id.* at 478. Defendant contends that there is no agreement regarding attorney fees, however, the mortgage agreement is a sufficient writing. However, under the facts of this case, "the parties" do not have an agreement for the lien. That is, the negotiation occurred with plaintiff's spouse, and defendant does not seek to recoup or execute upon property under the control of plaintiff's

spouse. Rather, defendant seeks to execute a lien against plaintiff, a party who did not agree to the lien.<sup>1</sup> Moreover, defendant failed to obtain a judgment for the fees and take procedures to enforce the judgment.<sup>2</sup> Accordingly, we cannot conclude that the trial court's ruling was an abuse of discretion. *Pharmaceutical Research, supra*.

Affirmed.

/s/ Pat M. Donofrio

/s/ Jane E. Markey

/s/ Karen M. Fort Hood

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<sup>1</sup> Defendant asserts that plaintiff had constructive notice of the lien. However, the consent judgment of divorce, which a representative of defendant's firm *signed*, provided that plaintiff received the home "free and clear" and failed to mention any encumbrance by his ex-wife or her legal representative. Moreover, the mortgage provided that the defendant "may deal" with the successor if the ownership of the premises became "vested" in another. Additionally, the mortgage provided that it would not transfer absent written consent by all parties. There is no evidence of written consent regarding any transfer of the mortgage to plaintiff. Additionally, it is questionable whether there was any change in the "vesting" of the marital home. While defendant contends that the home belonged to the ex-wife, there was never an adjudication on the merits. Plus, the facts and circumstances indicated that regardless of title ownership (in the name of the ex-wife), plaintiff made the payments on the home and the home was a marital asset, not separate property of the ex-wife. In light of the contradictions in the documentation and the factual circumstances presented, the contention that plaintiff had constructive notice that there would be a foreclosure on the home by defendant is without merit. Thus, there are no special equitable circumstances that warrant allowing a charging lien in favor of defendant against the property.

<sup>2</sup> Defendant contends that it was unnecessary to obtain a judgment because the mortgage contained a power of sale clause, therefore, foreclosure by advertisement was proper, citing MCL 600.3201. However, the criteria for allowing a charging lien on real estate requires a judgment surely to ensure that procedural protections are provided. If defendant sought to charge the lien against real estate, it was required to comply with one of the three circumstances that provide for the authority. Advertisement by foreclosure is not a criterion for allowing a charging lien against real estate. This claim is without merit.