

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL KELLY,

Plaintiff/Counter-Defendant/Cross-
Defendant-Appellee,

v

SPRIGGS PEOPLES,

Defendant/Counter-Plaintiff/Third-
Party-Plaintiff,

and

JANET PEOPLES,

Defendant,

v

EMANUEL SOTO and EQUIFIRST
CORPORATION,

Third-Party-Defendants/Cross-
Plaintiffs-Appellants,

v

YARITH CALITO,

Third-Party-Defendant/Cross-
Defendant.

Before: Fort Hood, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Third-party-defendants/cross-plaintiffs (“defendants”), Emanuel Soto (“Soto”) and Equifirst Corporation (“Equifirst”), appeal as of right an order denying their cross claims of

fraudulent misrepresentation and silent fraud against plaintiff/cross-defendant (“plaintiff”), Michael Kelly, and the order denying, in part, their motion for summary disposition.¹ We affirm.

Defendant Soto, purchased the property at 17208 Westmoreland in Detroit (“the property”) from Yarith Calito, an employee of plaintiff. Defendant, Equifirst Corporation, approved a mortgage for this purchase. Calito acquired this property by quitclaim deed from plaintiff after plaintiff purchased the property at a tax sale and obtained a judgment quieting title in his favor against Spriggs Peoples, the former owner. After Calito conveyed a warranty deed to Soto, defendants discovered that plaintiff’s judgment quieting title had been set aside thereby invalidating Calito’s conveyance of the property by general warranty deed.

On appeal, defendants argue that the trial court erred in failing to find plaintiff liable for fraud when he recorded the judgment to quiet title. This Court reviews a trial court’s factual findings in a bench trial for clear error but reviews the trial court’s legal conclusions de novo. MCR 2.613(C); *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

“The elements of fraud are: (1) that the charged party made a material representation; (2) that it was false; (3) that when he or she made it he or she knew it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) that he or she made it with the intention that it should be acted upon by the other party; (5) that the other party acted in reliance upon it; and (6) that the other party thereby suffered injury.” *Novi v Robert Adell Children’s Funded Trust*, 473 Mich 242, 253 n 8; 701 NW2d 144 (2005). “[W]here a party makes false representations to another with the intent or knowledge that they be exhibited or repeated to a third party for the purpose of deceiving him, the third party, if so deceived to his injury, can maintain an action in tort against the party making the false statements for the damages resulting from the fraud.” *Oppenhuizen v Wennersten*, 2 Mich App 288, 294; 139 NW2d 765 (1966) (citation and quotations omitted). Privity of contract is not required for recovery under this scenario. *Id.*

At the outset, we note that the trial court did not expressly find that plaintiff obtained the judgment quieting title through purposeful misrepresentations. Rather, the court expressly found that plaintiff’s assertion that he believed the property was abandoned *when he sold the property* to Calito “lacked credibility.” In determining whether plaintiff obtained the judgment quieting title by knowingly misrepresenting facts in his complaint, the court acknowledged plaintiff’s admission that he knew the building inspector had concluded the property was occupied and noted that plaintiff admitted he was aware that MCL 211.79a (pertaining to quieting title of vacant property) was applicable. Notwithstanding this, the court did not expressly conclude that plaintiff misrepresented that he believed the property was abandoned when filing his complaint to quiet title. Although the court found that plaintiff knew in May 2005 (one month after the sale to Calito) that the property was not abandoned, the trial court did not definitively indicate

¹ Although defendants contend that they also challenge the court’s order denying reconsideration, defendants make no further mention of this claim in their brief. Therefore, they have abandoned this issue on appeal. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

plaintiff was disingenuous in his belief that the property was abandoned when he filed his complaint to quiet title. The court also determined that plaintiff was mistaken regarding his interpretation of MCL 211.79a.² Although the record supports these factual findings, the trial court did not indicate in the order setting aside the default judgment that plaintiff engaged in purposeful misrepresentations when initiating his complaint to quiet title.

Consistent with the trial court's findings that plaintiff did not knowingly misrepresent that the property was vacant in obtaining the default judgment, but knew the property may have been occupied at the time he sold the property to Calito, plaintiff is not liable to defendants for fraud. Liability is precluded based on plaintiff's conveyance of the property to Calito by quitclaim deed, which indicated that he "[did] not warrant or guarantee marketable title." Thus, plaintiff made no material misrepresentation at the time he conveyed the property to Calito – that is at the time he was aware the property might have been occupied. Therefore, plaintiff is not liable for fraud.³

Next, defendants contend that plaintiff is liable for silent fraud. To establish silent fraud, there must be "a suppression of material facts and a legal or equitable duty of disclosure." *Bergen v Baker*, 264 Mich App 376, 382; 691 NW2d 770 (2004) (citation omitted). In addition, "there must be some type of misrepresentation, whether by words or action, in order to establish a claim of silent fraud." *M & D, Inc v McConkey*, 231 Mich App 22, 36; 585 NW2d 33 (1998). It is undisputed that the only issue on appeal regarding this claim is whether the court properly concluded that plaintiff did not owe defendants a duty to disclose that the judgment quieting title had been set aside.

Defendants claim plaintiff owed a legal duty to disclose because he knew potential purchasers would rely on the judgment quieting title. However, "a legal duty to make a disclosure will arise most commonly in a situation where inquiries are made by the plaintiff, to which the defendant makes incomplete replies that are truthful in themselves but omit material information." *Hord v Environmental Research Institute of Michigan (After Remand)*, 463 Mich 399, 412; 617 NW2d 543 (2000). Thus, it does not appear that plaintiff's intent that future purchasers rely on the judgment quieting title, standing alone, was sufficient to create a legal duty.

² Specifically, plaintiff testified that MCL 211.79a required only that an affidavit of a building inspector averring that the property is abandoned be attached to his complaint. However, MCL 211.79a(1)(c) requires, in relevant part, that "the building inspector of the municipality in which the property is located inspects the property and executes an affidavit attesting that the abandoned property is vacant, dilapidated, or open to entrance or trespass."

³ We note that defendants cite several cases in support of their conclusion that third parties may sustain an action in fraud. See, e.g., *Ver Wys v Vander Mey*, 206 Mich 499; 173 NW 504 (1919); *Smalley v McGraw*, 148 Mich 384; 111 NW 1093 (1907); *Oppenhuizen*, *supra* at 288. However, the premise underlying defendants' arguments regarding whether a third party may sustain an action in fraud is not in dispute.

Defendants also contend that plaintiff owed a legal duty to disclose because he was actively involved in the sale of the property to Soto. Although a seller of real property may be liable for silent fraud for failing to disclose title defects, *McMullen v Joldersma*, 174 Mich App 207, 212; 435 NW2d 428 (1988), the record reveals that plaintiff was not the seller in this case. As the trial court found, Soto purchased the property from Calito, not plaintiff. Calito held title to the property despite the fact that she still owed plaintiff money for the purchase, which she paid to plaintiff after the sale to Soto was concluded. Moreover, although plaintiff advertised the property, as acknowledged by Soto, plaintiff had no role in negotiating the purchase agreement between Calito and Soto. Moreover, even though Soto asserted that plaintiff informed him that Calito owned the property, he later testified that he did not remember at the time he purchased the property how Calito had acquired the property. Thus, the trial court's finding that, because of plaintiff's lack of involvement in the sale, a legal duty to disclose did not arise was not in error.

Defendants contend that the trial court's finding was erroneous because the case on which it relied in making this finding, *Ramos v Holmberg*, 67 Mich App 470; 241 NW2d 253 (1976) (*Ramos I*) was reversed on rehearing, *Ramos v Holmberg*, 74 Mich App 697; 254 NW2d 618 (1977) (*Ramos II*). In *Ramos I*, land contract vendees sold property to the plaintiffs (i.e., third party purchasers) containing material defects. *Ramos I*, *supra* at 472-473. Unaware of the defects at the time of purchase, the plaintiffs filed suit alleging that all the defendants (i.e., the land contract vendees and vendors from whom the vendees had originally purchased the property by land contract) fraudulently failed to disclose the defects. *Id.* The land contract vendors' only involvement in the plaintiffs' purchase was the vendors' consent to the vendees' assignment of the land contract to the plaintiffs. *Id.* at 475. This consent was necessary to relieve the vendees of liability on the original contract with the vendors. *Id.*

In finding that the vendors were not liable for fraud, this Court held that "the [vendors] owed the [plaintiffs] a legal duty to disclose defects that they knew of if they took an active part in the negotiations or if they falsely answered questions put to them by the [plaintiffs] concerning the conditions of the premises." *Id.* at 477. Because the plaintiffs failed to allege that the vendors were active in the negotiations or that the plaintiffs questioned the vendors about any defects, this Court concluded that the plaintiffs failed to allege facts on which relief could be granted and found dismissal of the plaintiffs' claim proper. *Id.* 477-478. On rehearing, this Court reversed that decision and adopted the dissent in *Ramos I*. *Ramos II*, *supra* at 698. The dissent reasoned that because the vendees' ability to transfer the property was dependent on the vendors' consent, dismissal of the plaintiff's claim was improper. *Ramos I*, *supra* at 479-480.

Contrary to defendants' assertion, we conclude that *Ramos II* does not require a finding that plaintiff committed silent fraud under the facts and circumstances of this case. Key to the dissent's conclusion in *Ramos I* was that the vendees needed the vendors' consent to release them from liability in transferring the property to the plaintiffs. In contrast, Calito did not require plaintiff's permission to convey the property to Soto. On the contrary, even though Calito owed plaintiff \$125,000 from her original purchase, any right she had to convey the property existed independent of plaintiff given that she acquired her rights to the property by quitclaim deed. Thus, Calito did not require plaintiff's permission or acquiescence to convey whatever rights she had to whomever she chose. Therefore, plaintiff was not involved in the

transfer of the property as contrasted with the vendors in *Ramos I*, and consequently, owed no legal duty to defendants.

It should be noted that the trial court cited *Ramos I* for the general proposition that “case law does not support the imposition of a duty of disclosure on a seller in any transaction other than the one in which that seller conveys the property to a buyer.” In light of the dissent’s reasoning in *Ramos I*, it appears the trial court’s assertion was overly broad. Regardless, given the analysis *supra*, the trial court did not err in finding that plaintiff owed no legal duty. *Gray v Pann*, 203 Mich App 461, 464; 513 NW2d 154 (1994) (“The fact that the trial court reached the right result for the wrong reason is not grounds to reverse on appeal.”)

Defendants also assert that plaintiff owed an equitable duty of disclosure because he profited from defendants’ reliance on the judgment.⁴ This Court has found that “reliance is an appropriate factor to be considered when determining whether a duty is owed a third party by a professional.” *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 467; 487 NW2d 807 (1992). As the trial court observed, no evidence was presented in this case demonstrating that plaintiff acted in a professional capacity, thus, precluding a determination that plaintiff owed any equitable duty to defendants. We note that defendants claim the court’s finding that plaintiff did not act in a professional capacity pertained to its ruling that plaintiff owed no legal, rather than equitable, duty. However, this is incorrect as the court expressly found that this reasoning pertained to its ruling regarding whether plaintiff owed an equitable duty.

Finally, defendants argue that the trial court erred in denying their motion for summary disposition with respect to plaintiff. We review de novo an appeal from an order pursuant to MCR 2.116(C)(10) granting summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary disposition pursuant to MCR 2.116(C)(10) should be granted when the moving party is entitled to judgment as a matter of law because there is no genuine issue of material fact. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing this motion, the Court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence and construe them in light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). If the nonmoving party would bear the burden of proof at trial, that party must show there is a genuine issue of material fact by setting forth documentary evidence. *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635 NW2d 69 (2001).

In denying defendants’ motion for summary disposition with respect to plaintiff, the court ruled that genuine issues of material fact existed “regarding whether [plaintiff] intentionally made misrepresentations to the Court in order to obtain judgment quieting title in his name” Viewing the facts in the light most favorable to plaintiff, the record supports the trial court’s ruling.

⁴ Defendants cite to the concurring opinion in *Transamerican Freight Lines, Inc v Quimby*, 381 Mich 149, 170; 160 NW2d 865 (1968) (Black, J., concurring), in support of their contention that plaintiff owed an equitable duty.

Defendants contend that it was clear and discernable by plaintiff that Peoples was not properly served with process in the action to quiet title. However, no evidence was presented that plaintiff was aware of this defect in the service of process. Plaintiff testified at deposition that only later did he learn that the Wayne County Sheriff was unable to serve Peoples and that his attempt to provide notice by certified mail was returned as “unclaimed.” Plaintiff implies he relied on the return of service completed by his process server, which indicated Peoples was properly served.⁵ Therefore, an issue of fact existed regarding plaintiff’s awareness that Peoples was not properly served precluding the grant of summary disposition.

Second, defendants contend that the building inspector’s affidavit attached to plaintiff’s complaint, which indicated that the property was occupied, demonstrates that plaintiff should have known the property was not vacant. However, plaintiff’s personal affidavit indicated that he believed the property was abandoned. Viewed in the light most favorable to plaintiff, this contradiction, without more, fails to establish that plaintiff made intentional misrepresentations to the court. Although plaintiff admitted at deposition that his complaint did not meet the requirements of MCL 211.79a (pertaining to quieting title to vacant property) due to the building inspector’s affidavit, this does not establish that plaintiff was aware of this defect at the time he filed his complaint.

Third, defendants argue that plaintiff’s failure to read the complaint evidences his reckless disregard for the truth. While plaintiff’s failure to read the complaint may be construed as negligent or reckless behavior, it does not demonstrate that plaintiff intentionally made material misrepresentations to the trial court.

Defendants’ remaining arguments that plaintiff recorded the judgment with the intent that potential purchasers of the property would rely on it and that defendants did, in fact, rely on the document to their detriment is not dispositive of whether plaintiff knowingly made material misrepresentations to the court in his complaint to quiet title. Therefore, these arguments do not support defendants’ contention that the court improperly denied their motion for summary disposition.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Michael J. Talbot

/s/ Stephen L. Borrello

⁵ There is no evidence within the lower court record that plaintiff, at this point in time, was aware of Peoples’ assertion that he had not received service of process or that the process server had erroneously reported service of process on his wife, who was deceased.