

STATE OF MICHIGAN
COURT OF APPEALS

JAMES MISSOURI,

Plaintiff/Counter-Defendant-
Appellant,

v

MWG PROPERTY CONSULTANTS, L.L.C.,
EDWARD LEE, NICOLE BLACK,
TRANSNATION TITLE INSURANCE
COMPANY, COUNTRYWIDE HOME LOANS,
INC., and R & C SERVICES, L.L.C., d/b/a
MORTGAGE POINTE OF MICHIGAN,

Defendants-Appellees,

and

AEGIS FUNDING CORPORATION,

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

and

DUKENS TALLANDIER,

Defendant/Cross-Defendant-
Appellee,

and

CHASE MANHATTAN MORTGAGE,

Defendant.

UNPUBLISHED

June 12, 2008

No. 273906

Wayne Circuit Court

LC No. 04-425782-CH

Before: White, P.J., and Hoekstra and Schuette, JJ.

WHITE, P.J. (*concurring in part and dissenting in part*).

I concur in the majority's affirmance regarding Aegis. I respectfully dissent, however, regarding plaintiff's request for equitable relief as to Tallandier, and would remand for consideration of that claim.

Plaintiff asserts that the trial court erred in failing to address his motions seeking to quiet title and declare an equitable mortgage. I agree with plaintiff that he adequately raised the issue whether as between plaintiff and Tallandier, the transaction should be treated as a sale or an equitable mortgage. Plaintiff's amended complaint did not use the term equitable mortgage. Nevertheless, it sought to quiet title in plaintiff, and sought rescission, damages, and other equitable relief. Plaintiff argued in his response to Aegis' summary disposition motion that the circumstances of the transaction required the trial court to set aside the warranty deed and reformulate the conveyance to Tallandier as an equitable mortgage. Plaintiff argued that he would owe the bank the amount he received from the loan, plus amounts paid on his behalf, less amounts he paid on the mortgage, and that the defendants would owe the remainder. Plaintiff raised the issue again in his trial brief. After trial, plaintiff again sought a ruling on the equitable mortgage issue.¹

¹ At the first post-trial hearing, during which the court raised some questions and set a date for hearing the matter, plaintiff's counsel engaged in the following exchange with the court:

THE COURT: . . . Then you want someone to give Mr. Missouri another 66,000 on equitable principle, is that what you're saying?

[PLAINTIFF'S COUNSEL]: No, no. what I'm saying is that Mr. Tallandier should, his deed should be set aside and he should only be given a mortgage for the amount that my client actually received, which was \$46,000.

THE COURT: And then who's going to pay the \$104,000 mortgage?

[PLAINTIFF'S COUNSEL]: That, that would have to be paid - - that would be Mr. Tallandier's responsibility.

THE COURT: so that \$66,000, I mean, that - -

[PLAINTIFF'S COUNSEL]: Well, if he pays it, of course, certainly then he's made my client whole.

THE COURT: Okay.

[PLAINTIFF'S COUNSEL]: So he can do it either way. If they want to pay Aegis my client would, my client will go home.

Plaintiff filed a post-trial brief addressing the matter:

The most fair and equitable remedy in this case would be for Tallandier to receive an equitable mortgage from Missouri for \$46,604.00, plus the jury verdict of \$66,350.00 reduced by 10% for the Plaintiff's comparative negligence, for a net judgment of \$59,715. The total mortgage would be \$106,319.00 minus all payments made by Missouri to Tallandier on the debt. . . . the judgment should be collected by a court appointed Receiver until Tallandier's debt to Aegis is equal to

(continued...)

Plaintiff produced evidence that the purchase price of the property was inadequate and that the parties intended the transaction between plaintiff and Tallandier to operate as a mortgage, rather than a sale. I conclude that while the court did not err in determining that Aegis' position as a bona fide mortgagee for value should not be disturbed, the court should have addressed whether as between Tallandier and plaintiff the transaction was properly regarded as a mortgage or a sale.

I reject defendants' argument that plaintiff waived this equitable claim in favor of damages. At trial, plaintiff clearly sought to have title restored to him subject to a mortgage for the amount he actually received. He again sought relief post-trial. That the court earlier rejected plaintiff's claims that Aegis' lien was void because Tallandier had no title to subject to a mortgage, and that the amount of Aegis' lien should be limited to the amount plaintiff actually received, did not relieve the court of addressing the remaining issue of title as between Tallandier and plaintiff. Plaintiff's computations and request for a receiver were but argument in favor of a particular remedy, and plaintiff's request for the declaration of an equitable mortgage as relates to Tallandier did not rise or fall on whether the court would ultimately determine to accept these numbers or appoint a receiver.

The award of money damages in plaintiff's favor for the amount of the loan proceeds the jury determined to be wrongfully diverted to the individual defendants does not render the equitable mortgage issue redundant. Plaintiff received part of the loan proceeds by check and through payments made for his benefit, and was granted a money verdict for the proceeds that were diverted. While this compensates him for the value of the house, it leaves him without a right to repay Aegis and retain title. As acknowledged by plaintiff's counsel at argument, the computations and structure of the relief might prove to be complicated. It is also unclear to what extent plaintiff retains rights under the existing land contract. It appears that the trial court perceived itself constrained by the jury verdict. However, the verdict did not preclude the court from addressing the equitable issue of title, and fashioning a remedy that would protect Aegis, Tallandier and plaintiff.

I would remand for consideration of plaintiff's request for equitable relief as to Tallandier.

/s/ Helene N. White

(...continued)

the amount of Missouri's original debt to Tallandier, at which time the receivership will be dissolved. Any principle [sic] payments made by Tallandier to Aegis will be credited towards the \$18,900.00 judgment against him. Tallandier will not be able to foreclose on the mortgage while it is in receivership.

At argument, plaintiff's counsel addressed the issue further.