

STATE OF MICHIGAN
COURT OF APPEALS

HOWARD L. WARSON,

Plaintiff-Appellee,

v

HOWARD D. WARSON, DANIEL L. WARSON,
MORGAGEIT, INC., ARGENT MORTGAGE
CO., L.L.C., MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., REX
FERGUSON and PENNY FERGUSON,

Defendants,

and

WASHINGTON MUTUAL BANK,

Defendant-Appellant.

UNPUBLISHED

June 2, 2009

No. 283401

Genesee Circuit Court

LC No. 06-083704-CK

Before: Bandstra, P.J., and Owens and Donofrio, JJ.

BANDSTRA, J. (*concurring*).

I concur in the conclusion of the lead opinion that the trial court's decision that the deed plaintiff signed, purportedly conveying an interest in the home to his son, was fraudulently induced. As to defendant's second argument, that nonetheless its interest in the home should not have been voided by the trial court because it was a bona fide purchaser, I concur in the result but for a different reason.

To qualify as a bona fide purchaser, defendant must have acted in good faith in taking its interest in the home, meaning that defendant had no reason to believe that some fraud or other irregularity was present requiring further inquiry. *American Cedar & Lumber Co v Gustin*, 236 Mich 351; 210 NW 300 (1926); 1 Cameron, Michigan Real Property Law (3d ed.), § 11.21, p 396. A party claiming to be a bona fide purchaser cannot have "notice" of such an irregularity, which has been defined as "whatever is sufficient to direct the attention of a purchaser of realty to prior rights or equities of third persons and to enable the purchaser to ascertain their nature by inquiry." Cameron, *supra* at § 11.22, p 396; *Kastle v Clemons*, 330 Mich 28; 46 NW2d 450 (1951). Further, possession by another may also disqualify a person from being a bona fide purchaser for value because, "(i)f someone is in possession, the purchaser should determine that

person's rights, since the purchaser takes subject to them." *Cameron, supra* at § 11.25; *Smelsey v Guarantee Financial Corp*, 310 Mich 674; 17 NW2d 863 (1945).

The uncontested record in this case shows that defendant was on notice of plaintiff's continuing claim to an interest in the home under these principles. Defendant acquired its interest in the home from MortgageIt long after this litigation, where MortgageIt was a defendant and plaintiff was prosecuting his claim, was commenced. Defendant does not argue that it failed to receive notice of the litigation from MortgageIt and, in fact, defendant was added as a party to the litigation shortly after it took its interest in the home. Plaintiff was living at the home at the time defendant acquired its interest and the mortgage that was foreclosed, resulting in defendant's acquisition of an interest in the home, was an "owner-occupied" mortgage. Again, defendant does not claim to have not been so informed. And, even apart from that language in the mortgage, plaintiff's residence in the home gave rise to an obligation on defendant to determine plaintiff's rights in the home.

Considering these facts, I conclude that defendant's claim to be a bona fide purchaser without notice is without merit and, accordingly, that the trial court properly rejected defendant's claim to an interest in the property arising out of the fraudulently induced deed.

/s/ Richard A. Bandstra