

STATE OF MICHIGAN
COURT OF APPEALS

NICOLA VULJAJ,

Plaintiff-Appellant,

v

VICTOR CAMAJ and ROBERT SCOTT
MARTIN,

Defendants-Appellees.

UNPUBLISHED

October 1, 2009

No. 286526

Wayne Circuit Court

LC No. 06-624626-CK

Before: Murphy, P.J., and Meter and Beckering, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The subject of this dispute is a five-story, commercial building in downtown Detroit. The building was at one time owned by Nua Vuljaj, a cousin of plaintiff, who incorporated the Coney Island restaurant that operated in the building. In 2001, Nua sold the building to defendant Camaj. However, property taxes were not paid in 2003 and 2004, and the property went into forfeiture proceedings. At nearly the last minute, defendant Martin paid the delinquent taxes and penalties to save the property from being seized by the county, and Camaj agreed to lease the property to Martin with an option to purchase.

Plaintiff, believing that he had a right to the property with which the sale to Martin interfered, sued both defendants, alleging seven counts: quiet title, constructive trust, breach of contract, tortious interference with a contract, civil conspiracy, and damages. Plaintiff's claim was based on his belief that he and Nua had an understanding that the property was in Nua's name only because plaintiff had bad credit, but that plaintiff was nonetheless the owner. According to plaintiff's deposition testimony, although his name was never on the title to the property, he paid the bills. He and Nua were partners, and plaintiff put \$200,000 of mostly borrowed money into building the restaurant, although he had no proof of the amount he actually invested. When Nua had trouble paying for the building, he sold it to Camaj; however, the same arrangement with plaintiff was to continue; plaintiff ran the restaurant and was to pay the mortgage and bills.

Camaj moved for summary disposition, arguing that plaintiff could not have a legal interest in the property because conveyances of real estate must be in writing, MCL 566.108, and that plaintiff did not have an equitable interest justifying the imposition of a constructive trust. Camaj asserted that the case plaintiff cited for that principle, *Arndt v Vos*, 83 Mich App 484; 268 NW2d 693 (1978), was inapplicable because it involved a plaintiff who had held title to the property but deeded it to the defendant to secure a loan.¹

The trial court found that because there was no writing expressing an intent to convey a property interest to plaintiff, plaintiff's only possible remedy was that of a constructive trust. However, even if the oral agreement existed, plaintiff had not performed his part and so equitable considerations did not favor him. The trial court granted summary disposition in favor of both defendants.

In this Court, plaintiff argues that the trial court erred in deciding that a constructive trust was not proper. Plaintiff contends that the transaction between Camaj and Nua was intended to include plaintiff as an owner. Plaintiff's principal point is that a constructive trust can be imposed where the defendant title-holder is guilty of some wrongdoing that renders it unconscionable for him to retain legal title. *Racho v Beach*, 254 Mich 600, 606-607; 236 NW 875 (1931).

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A trial court's determination regarding whether to impose a constructive trust is also reviewed de novo on appeal. *Winchell v Mixter*, 316 Mich 151, 159; 25 NW2d 147 (1946). MCR 2.116(C)(10) provides for summary disposition where there is no genuine issue regarding any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing MCR 2.116(G)(5). "[T]he court's task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial." *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). Where the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Quinto, supra* at 363. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). A court may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition under MCR 2.116(C)(10). *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999).

MCL 566.106 provides:

¹ At the motion hearing, Martin orally concurred in Camaj's motion.

No estate or interest in lands, . . . nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing.

MCL 566.108 provides in part:

Every contract for . . . the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof be in writing, and signed by the party by whom the . . . sale is to be made, or by some person thereunto by him lawfully authorized in writing[.]

In *Arndt, supra* at 487, this Court explained the general features and dimensions of a constructive trust, stating:

Constructive trusts are creatures of equity and their imposition makes the holder of the legal title the trustee for the benefit of another who in good conscience is entitled to the beneficial interest. They are distinguished from express and resulting trusts in that they do not arise by virtue of agreement or intention, but by operation of law. Constructive trusts, while infinite in their variety, are imposed only where it would be inequitable to do otherwise. [Citations omitted.]

In *Racho, supra* at 606-607, our Supreme Court discussed the particular circumstances in which a constructive trust can be imposed:

It is true that in the absence of fraud, accident, or mistake, parol testimony is inadmissible to establish a trust in real estate. However, when it is shown that title has been obtained through fraud, misrepresentation, concealment, undue influence, duress, taking advantage of one's weakness, or necessities, or any other similar circumstances which render it unconscionable for the holder of the legal title to retain and enjoy the property, and there are no intervening rights of bona fide purchasers, equity will impress a constructive trust on the property and turn it over to the one to whom it rightfully belongs. This rule has been frequently applied in cases of agents who take advantage of their fiduciary relationship and thus secure the property of their principal. [Citations omitted.]

In *Kent v Klein*, 352 Mich 652, 656-657; 91 NW2d 11 (1958), the Michigan Supreme Court indicated that the statute of frauds does not bar a court from imposing a constructive trust under appropriate circumstances, and it emphasized that wrongdoing is unnecessary:

But what of the statute of frauds? Defendant urges again and again that she made no promise whatever to hold in trust, that nothing was said about a trust, and, as a clincher, that even if she had so orally promised the promise would have been unenforceable under the statute of frauds. Her conclusion is that she keeps the land.

What is overlooked in all of this is the fact that the constructive trust is not a trust at all, any more than a quasi-contract is a contract. Both are remedial devices. The constructive trust, as it was put by Mr. Justice Cardozo, "is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee." It arises by operation of law. That defendant made no promise to hold in trust is utterly irrelevant. The constructive trust is as contemptuous of promises not made as of promises broken. . . . Fraud in the inception we do not require, nor deceit, nor chicanery in any of its varied guises, for it is not necessary that property be wrongfully acquired. It is enough that it be unconscionably withheld. Nor is it necessary, to move the chancellor's conscience, that plaintiffs have suffered a loss, although in most cases there is both a loss to the plaintiffs and a like gain to the defendant. [Citations omitted.]

Here, the deposition testimony of defendants Camaj and Martin indicate that their transaction involved a lease with an option to purchase and that no transfer of legal title had yet occurred; therefore, Camaj remains the legal titleholder. As part of their transaction, Martin agreed to pay off \$80,000 to \$90,000 in outstanding debts owed on the building, which encompassed delinquent tax, utility, and mortgage payments. Martin indeed paid off these debts. The balance on the mortgage was approximately \$511,000 at the time of the transaction between Camaj and Martin. The deposition testimony suggests that Martin is making lease payments on the property in an amount of the monthly mortgage, approximately \$5,000, and that Martin, in order to save Camaj some time and effort, is actually paying the "lease" amount directly to the lender, thereby paying down the mortgage debt. The deposition testimony also indicates that, between July 2001 and March 2006, plaintiff was making the monthly \$5,000 mortgage payments on the loan, except for three months of payments that were made by Camaj. Plaintiff conceded that he had become two to three months delinquent in the mortgage. Following the 2001 transaction, plaintiff made numerous tax and utility payments, but he acknowledged that he had now become delinquent as to such payments.

We hold that equity supports the trial court's conclusion that it would not be unconscionable to deny plaintiff the relief sought. Plaintiff testified that Camaj signed off on the deed and mortgage purely as a favor to plaintiff; Camaj received no financial benefit from the arrangement. Plaintiff also testified that he was aware that Camaj's credit was being ruined by the delinquencies and that foreclosure would have occurred, further damaging Camaj's credit. Plaintiff's flippant response was that Camaj could have pursued bankruptcy, yet this would have done great damage to Camaj's credit. Plaintiff himself had made efforts to sell the building, which included negotiations with Martin until Martin discovered that Camaj was the legal titleholder. At the point of time summary disposition was granted, Camaj was still legally obligated under the mortgage, hoping and relying on Martin's continued ability to pay the monthly lease. Martin himself appears to be a completely innocent party in this case, and we find nothing inappropriate in the fact that Martin proceeded to negotiate with the legal titleholder instead of plaintiff. Also, the record does not indicate that Camaj received any extra financial benefit from the transaction with Martin, other than the benefit of having the delinquent payments taken care of and the monthly mortgage payments made.

We are not unsympathetic to the fact that plaintiff paid thousands of dollars over the years in mortgage, utility, and tax payments. However, the payments had become severely delinquent and Camaj had a reasonable basis to protect himself, as he was the mortgagor and legal titleholder on the hook for the payments. If a constructive trust was imposed, the legal fiction would place Camaj in the position of a trustee, holding the fee simple for the benefit of plaintiff, with the ultimate result being an ordered conveyance of the property to plaintiff. At first glance, this might appear to be a fair and equitable result, with plaintiff stepping into the shoes of Camaj. However, we cannot ignore the reality of the Camaj-to-Martin transaction and plaintiff's argument that the building is worth considerably more than the amount agreed to by Camaj and Martin, which argument indicates plaintiff's intention to profit by a later sale if the building were conveyed to him under the constructive trust doctrine. But this would inequitably injure Martin, depriving him of the benefit of his bargain relative to the transaction with Camaj. If plaintiff obtained the relief sought, minimally he would need to pay Martin for all of the funds expended to pay off the delinquencies, but this would still be inequitable to Martin who now possesses the property and runs his own business thereon. Although equity might dictate that a simple change of ownership from Camaj to plaintiff might be fair if the transaction with Martin remained in place, plaintiff did not seek nor demand such relief. In plaintiff's prayer for relief in the complaint, he seeks a declaration granting him fee simple title and a declaration voiding the lease option executed by Camaj and Martin. Equity does not demand such relief under the circumstances of this case.

Affirmed.

/s/ William B. Murphy

/s/ Patrick M. Meter

/s/ Jane M. Beckering