

STATE OF MICHIGAN
COURT OF APPEALS

ST. PAUL COMMUNITY CHRISTIAN
CHURCH,

UNPUBLISHED
January 26, 2012

Plaintiff/Counter Defendant-
Appellant,

v

No. 301749
Oakland Circuit Court
LC No. 2009-105036-CH

GMAC MORTGAGE, L.L.C.,

Defendant/Counter Plaintiff/Third
Party Plaintiff-Appellee,

and

TONYA G. REESE,

Third Party Defendant.

Before: GLEICHER, P.J., and CAVANAGH and O'CONNELL, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition in this action to quiet title. We affirm.

Bernard Robertson is plaintiff's pastor, as well as a licensed real estate agent. Robertson knew third-party defendant, Tonya Reese, for about twenty years in both a personal and professional capacity. In fact, they worked together as real estate agents for the same broker at one time. However, in the more recent past, Robertson had been Reese's real estate agent and had sold her many properties over the course of about twelve years, including the one at issue here.

In January of 2007, Reese purchased property located at 5665 Stonington Court in West Bloomfield and Robertson was her real estate agent. Reese executed a purchase mortgage for \$305,000 in favor of CML Direct, LLC, which was recorded on February 1, 2007. Robertson knew that Reese obtained a purchase mortgage on the property and, in fact, attended the closing and executed the closing documents on her behalf as her power of attorney. At some point in time, Reese allegedly contacted Robertson and was interested in selling the same property to

plaintiff on a land contract. She offered to sell it for \$30,000. Robertson declined, but offered \$20,000. According to Robertson, Reese said “okay.” Robertson testified that he asked Reese: “What about your mortgage on the property?” And Reese replied that “she’ll take care of that.” Robertson knew the amount of Reese’s mortgage and knew that the property was worth about \$270,000 or \$280,000, but did not think it strange that Reese would sell the property to plaintiff for only \$20,000 because it was “a gift.”

On June 14, 2007, plaintiff, through Robertson, entered into the land contract with Reese, which was recorded on June 18, 2007. Robertson did not do a title search or obtain a title commitment because Reese had just recently purchased the property, but he knew about the mortgage. Although the property was allegedly a gift to plaintiff, Robertson testified that he personally paid Reese \$10,000 in cash at the time the contract was made and that Reese had requested cash. Robertson paid the balance of \$10,000, also in cash, about a month or two later. Robertson testified that Reese gave him a receipt for both cash payments, but he could not produce them. Plaintiff did not reimburse Robertson for paying the purchase price of the property.

However, on May 15, 2007, prior to Reese and plaintiff entering into the land contract, Reese had refinanced the property by executing a mortgage for \$280,000 in favor of GreenPointe Mortgage Funding, Inc. She had also secured a home equity line of credit for \$36,400. These transactions were not recorded until June 21, 2007, three days after plaintiff recorded the land contract. Robertson testified that he did not know that Reese refinanced the property. But, in 2008, Reese was in default on the mortgage. Robertson and his family were living on the property when foreclosure notices were received. Subsequently, the property was sold at a sheriff’s sale and then quitclaimed to defendant GMAC.

Plaintiff then filed its complaint to quiet title, arguing that its interest in the property was superior to defendant’s interest because it recorded its land contract interest before defendant recorded its mortgage interest. Defendant filed a counterclaim, arguing that any interest plaintiff had in the property was inferior to its interest. Defendant also filed a third-party complaint against Reese. Subsequently cross-motions for summary disposition were filed by plaintiff and defendant. Plaintiff argued that its interest had priority over defendant’s interest because, pursuant to MCL 565.29, plaintiff recorded its interest first. Defendant argued that plaintiff had actual or constructive notice that the property was encumbered by a mortgage before it entered into an alleged land contract with Reese; thus, plaintiff was not a bona fide purchaser and was not entitled to the protections afforded by MCL 565.29. The trial court agreed with defendant, holding that plaintiff was not a bona fide purchaser because it had, at least, notice of possible rights of a third party and did not make reasonable inquiries. Thus, defendant’s interest in the property was superior to plaintiff’s alleged interest. Accordingly, summary disposition was granted in defendant’s favor. This appeal followed.

Plaintiff argues that the trial court erred in granting defendant’s motion for summary disposition because there are genuine issues of material fact regarding whether plaintiff was a bona fide purchaser of the property. We disagree.

A trial court’s decision on a motion for summary disposition is subject to de novo review. *Cedroni Ass’n v Tomblinson, Harburn Ass’n*, 290 Mich App 577, 584; 802 NW2d 682 (2010).

A motion brought under MCR 2.116(C)(10) tests the factual support for a party's case. *Id.* The pleadings and documentary evidence are viewed in the light most favorable to the nonmovant to determine if a genuine issue of material fact exists. *Id.* An action to quiet title is an equitable action subject to de novo review, but the trial court's findings of fact are reviewed for clear error. *Ameriquist Mtg Co v Alton*, 273 Mich App 84, 92; 731 NW2d 99 (2006); *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). "A court acting in equity 'looks at the whole situation and grants or withholds relief as good conscience dictates.'" *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992), quoting *Hunter v Slater*, 331 Mich 1, 7; 49 NW2d 33 (1951).

Michigan's race-notice statute, MCL 565.29, states in pertinent part:

Every conveyance of real estate within the state hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded.

Thus, to be entitled to the protections of MCL 565.29, one must be a purchaser in good faith. A purchaser in good faith, or bona fide purchaser, is "one who purchases without notice of a defect in the vendor's title." *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 393; 761 NW2d 353 (2008). "Notice" of a defect depriving a purchaser of good faith may be either actual or constructive, *Richards v Tibaldi*, 272 Mich App 522, 539; 726 NW2d 770 (2006), and had been defined as:

When a person has knowledge of such facts as would lead any honest man, using ordinary caution, to make further inquiries concerning the possible rights of another in real estate, and fails to make them, he is chargeable with notice of what such inquiries and the exercise of ordinary caution would have disclosed. [*Kastle v Clemons*, 330 Mich 28, 31; 46 NW2d 450 (1951).]

Similarly,

[i]t is the duty of a purchaser of real estate to investigate the title of his vendor, and to take notice of any adverse rights or equities of third persons which he has the means of discovering, and as to which he is put on inquiry. If he makes all the inquiry which due diligence requires, and still fails to discover the outstanding right, he is excused, but, if he fails to use due diligence, he is chargeable, as a matter of law, with notice of the facts which the inquiry would have disclosed. [*American Fed S & L Ass'n v Orenstein*, 81 Mich App 249, 252; 265 NW2d 111 (1978), quoting *Schweiss v Woodruff*, 73 Mich 473, 477-478; 41 NW 511 (1889).]

In this case, plaintiff knew that Reese executed a purchase mortgage on the property shortly before it entered into a purported land contract with Reese. That mortgage was in the amount of \$305,000 and the land contract price was \$20,000 cash. Plaintiff, through Robertson, admitted that the only inquiry made with regard to that purchase mortgage was asking Reese: "What about your mortgage on the property?" She replied that she would "take care of that." Although plaintiff had knowledge of facts "as would lead any honest man, using ordinary

caution, to make further inquiries,” plaintiff did not make any further inquiry to determine if Reese, in fact, “took care of that,” before purportedly entering into the land contract for \$20,000.

As a purchaser of the property, plaintiff had the duty to investigate further and exercise due diligence to determine any possible adverse interests and rights with regard to the property. If plaintiff had fulfilled its duty, it would have likely discovered that Reese was attempting to convey to plaintiff property that remained encumbered with a mortgage. Although plaintiff recorded its land contract before defendant recorded its mortgage, plaintiff still would likely have been able to determine either (a) that the purchase mortgage was not discharged or (b) that it was discharged as a consequence of refinancing. See *Kastle*, 330 Mich at 31. However, if plaintiff had made “all the inquiry which due diligence requires, and still faile[d] to discover the outstanding right,” plaintiff would not be charged with notice of any adverse rights. See *American Fed S & L Ass’n*, 81 Mich App at 252. Here, plaintiff made no inquiry at all into the possible rights of any third party with regard to this property. Thus, plaintiff is charged with notice of the “possible rights of another” in the property. Accordingly, plaintiff cannot be deemed a purchaser in good faith and is not entitled to the protections afforded by MCL 565.29. That is, considering “the whole situation” we cannot in “good conscience” grant plaintiff equitable relief. See *Michigan Nat’l Bank & Trust Co*, 194 Mich App at 410. Therefore, the trial court properly granted summary disposition in defendant’s favor.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Mark J. Cavanagh

/s/ Peter D. O’Connell