STATE OF MICHIGAN

COURT OF APPEALS

MARY SAND,

Plaintiff-Appellee,

v

DETROIT LEASING COMPANY and MICHAEL KELLY,

Defendants,

and

CITY OF DETROIT,

Defendant-Appellant.

UNPUBLISHED
May 1, 2012

No. 301753
Wayne Circuit Court
LC No. 06-623032-CH

Before: STEPHENS, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

Defendant, city of Detroit, appeals the trial court's judgment in favor of plaintiff, Mary Sand. Detroit also contends that the trial court erred by denying its motion for summary disposition. For the reasons set forth below, we vacate the trial court's judgment and remand for entry of an order granting summary disposition to Detroit.

I. FACTS AND PROCEEDINGS

In 1987, plaintiff and her then-husband, David Lalley, purchased property at 92 Alfred in Detroit. The front of the building was a large house that had been converted to a rooming house. A prior owner also added a multi-unit apartment building to the back of the house. After plaintiff and Mr. Lalley divorced, Mr. Lalley deeded the property to plaintiff in 1991. In 1998, plaintiff sold the property under a land contract to Nicholas Aggor, but she testified that he did not comply with the contract, the agreement ended in 2002, and she had him evicted from the property. While Mr. Aggor was in possession of the property, the building caught fire twice. In March 2001, the city received a dangerous building complaint and building inspector David Reilly inspected the property on March 28, 2001. According to Mr. Reilly, at that time, the building was vacant, open to the elements on all sides, the roof and floors were collapsing, there were missing windows, doors and steps, and the building had extensive fire damage.

Mr. Reilly posted a dangerous building placard on the front of the building, along with notice of a hearing to be conducted by the Building and Safety Engineering Department. Mr. Reilly also requested from his department that a dangerous building notice and notice of hearing be sent to all interested parties. A department employee searched the Wayne County Register of Deeds, which referenced plaintiff's married name, Mary Lalley, and her correct address at 20800 Marter Road in Grosse Pointe Woods. Detroit maintains that it sent notice to plaintiff but she denies that she ever received notice of the hearing. The record contains a partially obscured copy of a U.S. Postal Service "return receipt" card indicating that the building department sent something to plaintiff, but it was apparently returned undelivered.

The building department held a hearing at its dangerous buildings office on May 22, 2001. On June 27, 2001, the Detroit City Council authorized the demolition of 92 Alfred, but deferred action pending approval by the Historic District Commission. Detroit recorded a notice of lis pendens at the Wayne County Register of Deeds on September 7, 2001. Mr. Aggor actively communicated with the city to avoid demolition of the building, and the record reflects that he agreed with the Historic District Commission to make repairs. However, there are no records of Mr. Aggor's involvement in any effort to rehabilitate the building after his eviction in 2002.[1]

The Historic District Commission approved the demolition of the attached apartment building and, in the meantime, the condition of the entire building worsened. By September 2003, the building department deemed 92 Alfred to be an immediate hazard. The city council discussed the property at a hearing on September 10, 2003, and ordered the emergency demolition of the property. Again, Detroit maintains that it notified plaintiff about the demolition at her address in Grosse Pointe Woods, but she maintains that she never received the notice. The record contains a copy of the emergency demolition letter which indicates that plaintiff was sent a copy, and a U.S. Postal Service "return receipt" card indicates that, on September 10, 2003, the city sent something to plaintiff under her married name at her address in Grosse Pointe Woods. It appears that the letter was again returned undelivered. Despite the emergency order in 2003, the Historic District Commission did not approve demolition of the entire building until April 2004, and the city ultimately razed the building in December 2004 at a cost of $49,470.45.[2] The record reflects that plaintiff was actually aware of the lis pendens the city filed in 2001 that specifically states that the property would be demolished as an unsafe structure. Plaintiff testified at trial that she learned about the lis pendens in 2004 when she was attempting to sell the property to a developer.

[1] The record reflects that plaintiff failed to pay taxes on the property for various tax years and that Michael Kelly and Detroit Leasing Company held valid tax and redemption liens on the property. In this action, plaintiff also sued Michael Kelly and Detroit Leasing Company to quiet title to the property. The parties have not appealed any order pertaining to that claim.

[2] Plaintiff argued that she intended to sell the property to a developer in July 2004, but could not do so because of the lis pendens and because the city demolished the building.

Thereafter, plaintiff filed this action against Detroit on August 11, 2006. Specifically, plaintiff asserted that Detroit is liable for trespass, common law slander of title, and statutory slander of title under MCL 565.108. Thereafter, Detroit filed a counterclaim against plaintiff for the cost to demolish the property. Detroit filed a motion for summary disposition pursuant to MCR 2.117(C)(7) and (C)(10), and argued that it was entitled to judgment as a matter of law on the ground of governmental immunity and that there is no genuine issue of material fact that it lawfully demolished the building at 92 Alfred under Michigan law, MCL 125.401 *et seq*., and Detroit Ordinance 290-H. In response, plaintiff took the position that Detroit must pay her damages because it failed to adequately notify her as the owner of the property before it decided to raze the building.

The trial court denied Detroit's motion for summary disposition and held a bench trial on July 31, 2008. On October 28, 2008, the trial court issued an order containing the following:

> I. Conclusions of Law
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> 1. The building at 92 Alfred Street, Detroit, Michigan was a dangerous building under the Dangerous Building Ordinance 290-H, 1984 Detroit City Code, §12-11-28.0 et seq.
>
> 2. The City failed to comply with the foregoing in that it failed to effectuate notice of the proposed demolition of said property to Mary Sand.

The court entered judgment in favor of plaintiff and ultimately awarded her $160,436 in damages, which was equal to twice the state equalized value (SEV) of the property as of the year 2004, when the property was demolished.

II. DISCUSSION

We hold that the trial court should have granted summary disposition to Detroit because the city was entitled to governmental immunity as a matter of law. MCL 691.1407(1) states that "a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." It is undisputed that Detroit was engaged in a governmental function when it determined that the building at 92 Alfred was a dangerous building and when it demolished the building pursuant to dangerous building ordinance 290-H and MCL 125.401 *et seq*.[3]

To maintain an action against a government agency, a plaintiff must plead her claims in avoidance of governmental immunity. *Mack v Detroit*, 467 Mich 186, 198; 649 NW2d 47

[3] Pursuant to MCL 691.1401(f): "'Governmental function'" is an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. Governmental function includes an activity, as directed or assigned by his or her public employer for the purpose of public safety, performed on public or private property by a sworn law enforcement officer within the scope of the law enforcement officer's authority."

(2002). Plaintiff failed to do so. In her complaint, plaintiff asserted only tort claims against Detroit, including trespass and slander of title. *Wiggins v City of Burton*, 291 Mich App 532, 558; 805 NW2d 517 (2011); *Royce v Citizens Ins Co*, 219 Mich App 537, 544; 557 NW2d 144 (1996). To the extent plaintiff alleged a statutory slander of title claim, there is no language in MCL 565.108 to suggest that the government is subject to civil liability contrary to governmental immunity principles or that the statute was intended to amend a government agency's authority to deal with dangerous buildings.[4] Further plaintiff failed to plead a claim that fits within a statutory exception to governmental immunity. *Thurman v City of Pontiac*, ___ Mich App ___; ___ NW2d ___ (2012), citing *Kendricks v Rehfield*, 270 Mich App 679, 681; 716 NW2d 623 (2006).

We further note that plaintiff's reliance on an unpled, general violation of her "due process" rights did not entitle her to damages from the city of Detroit. Plaintiff did not plead or prove a claim under the state or federal "takings" clauses, nor did she plead or raise in the trial court a claim pursuant to 42 USC 1983 or that her injury was caused by Detroit's "policy or custom." Thus, to the extent plaintiff's claims against Detroit can be interpreted as constitutional, she is not entitled to damages in state court. *Jones v Powell*, 462 Mich 329, 335–337; 612 NW2d 423 (2000); see also *Khan v City of Flint*, 490 Mich 851; 800 NW2d 600 (2011). Because plaintiff asserted no viable claim against Detroit and Detroit is protected by governmental immunity, Detroit was entitled to summary disposition on plaintiff's claims.

We also hold that there is no genuine issue of material fact with regard to Detroit's compliance with constitutional "due process" requirements. Due process generally requires "notice and an opportunity to be heard." *Dusenbery v United States*, 534 US 161, 167; 122 S Ct 694; 151 L Ed 2d 597 (2002), quoting *United States v James Daniel Good Real Property*, 510 US 43, 48; 114 S Ct 492; 126 L Ed 2d 490 (1993). Actual notice is not required, *Sidun v Wayne Co Treasurer*, 481 Mich 503, 509; 751 NW2d 453 (2008), but notice must be "'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Dusenbery*, 534 US at 168, quoting *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314, 319; 70 S Ct 652; 94 L Ed 865 (1950). By sending plaintiff notice, "return receipt requested," at her proper address in both 2001 and 2003, holding multiple hearings on the matter, posting notice on the property itself, and filing a lis pendens lien of which plaintiff was admittedly aware, Detroit complied with "due process" notice requirements, notwithstanding a lack of record evidence about whether plaintiff's initial notice was sent by certified mail pursuant to MCL 125.540(5).[5] We further observe that

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[4] In any case, at no point did plaintiff plead facts or present evidence to establish a slander of title claim, which requires a showing of falsity, malice, and special damages. *B & B Inv Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17, 20 (1998).

[5] MCL 125.540(5) states:

> The notice shall be in writing and shall be served upon the person to whom the notice is directed either personally or by certified mail, return receipt requested, addressed to the owner or party in interest at the address shown on the tax records. If a notice is served on a person by certified mail, a copy of the notice shall also

the land contract vendee, Mr. Aggor, responded to the 2001 notice as owner of the property by communicating with the city regarding the demolition order, and he agreed to make repairs to the dangerous building. From that point, it was not incumbent upon Detroit, pursuant to MCL 125.401 *et seq*. or Ordinance 290-H, to further apprise all interested parties of further action when the building remained on the list to be demolished. That plaintiff failed to pursue the matter after evicting Mr. Aggor and failed to address the lis pendens is not the fault of the city of Detroit.

Under these facts, the city provided notice reasonably calculated to apprise the interested parties of the action and an opportunity to be heard. Accordingly, Detroit was also entitled to recover its cost to demolish the dangerous building under Ordinance 290-H. For the reasons set forth in this opinion, we vacate the trial court's judgment following the bench trial and remand for entry of an order granting summary disposition to Detroit on plaintiff's complaint and Detroit's counterclaim. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Henry William Saad

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be posted upon a conspicuous part of the building or structure. The notice shall be served upon the owner or party in interest at least 10 days before the date of the hearing included in the notice.