STATE OF MICHIGAN

COURT OF APPEALS

JOHN R. KELLY, Plaintiff-Appellant,	UNPUBLISHED October 16, 2012
v	No. 307220 Berrien Circuit Court
FIFTH THIRD BANK, Defendant-Appellee.	LC No. 2010-000419-CH

Before: FITZGERALD, P.J., and METER and BOONSTRA, JJ.

PER CURIAM.

In this action to quiet title, the trial court granted defendant's cross-motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10) and denied plaintiff's motion for summary disposition. Because the trial court committed a clear error of law in granting defendant's motion, we vacate the trial court's order granting summary disposition and closing the case, and remand for further proceedings.

I. BASIC FACTS AND PROCEDURE

This case arose out of plaintiff's action to quiet title to real property located in the Township of New Buffalo in Berrien County, Michigan. The property comprises Lots 15, 16, and 17 of the River Bluff Condominium Development. Plaintiff purchased the property from Butler Development, LLC in fee simple on December 15, 2005. The total purchase price was $700,000 and the deed transferring the property from Butler Development to plaintiff was recorded. Butler Development maintained ownership of the land surrounding the property that it sold to plaintiff. Plaintiff and Butler Development intended to obtain zoning approval from the Township of New Buffalo to construct a condominium development on their properties.

Plaintiff alleged that New Buffalo zoning ordinances required common ownership of units in a condominium development. For that reason, plaintiff and Butler Development had come to believe that they would not be able to obtain zoning approval for the condominium project unless all of the property in the proposed development site was owned by one entity. As a result, Butler Development proposed, and plaintiff agreed, that plaintiff would temporarily re-convey the property to Butler Development, thereby creating common ownership of all the property in the proposed development site. In February of 2006, plaintiff conveyed the property in fee simple by warranty deed to Butler Development (for nominal consideration). This deed was recorded. Plaintiff and Butler Development further agreed that after Butler Development

had obtained zoning approval for the condominium site, Butler Development again would re-convey the property to plaintiff. In August of 2006, after Butler Development obtained zoning approval for the condominium development, Butler Development directed its attorneys to convey the property back to plaintiff. The attorneys drafted a deed in accordance with Butler Development's instructions. However, the deed was never recorded.

On October 9, 2009, defendant obtained a money judgment against Butler Development after Butler Development breached a promissory note on an unrelated debt. Defendant recorded its judgment lien on November 4, 2009. The judgment lien attached to all of Butler Development's property in Berrien County. Because Butler Development was the record owner of the property at issue in this case, defendant's judgment lien attached to that property. At the time defendant recorded its notice of judgment lien, the balance due on its judgment against Butler Development was $699,826.48.

On September 3, 2010, long after defendant had recorded its judgment lien, Butler Development executed and recorded a quitclaim deed whereby it conveyed the property to plaintiff. The quitclaim deed stated that it was meant as a replacement for a deed that was supposed to have been executed between Butler Development and plaintiff in 2006.

After attempting to have defendant recognize his claim of ownership over the subject property, plaintiff filed an action to quiet title and alleged that its interest in the property was not subject to defendant's judgment lien. Both plaintiff and defendant subsequently moved for summary disposition. The trial court granted defendant's cross-motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10) and dismissed plaintiff's action to quiet title, holding that the rationale of *First Nat'l Bank v Phillpotts*, 155 Mich 331; 119 NW 1 (1909), required dismissal because defendant had no notice of any interest that plaintiff held in the subject property.

Plaintiff filed a motion for reconsideration and argued, among other things, that the trial court misapplied *Phillpotts* because the lien holder in *Phillpotts* was an execution creditor, rather than a mere judgment creditor. The trial court permitted defendant to respond to plaintiff's motion for reconsideration, and defendant did so, arguing that it had levied on the property, and that it therefore was an execution creditor who had attained the rights of a bona fide purchaser for value. Thus, it argued that its interest in the property was sufficient to defeat plaintiff's alleged prior unrecorded ownership interest in the property pursuant to the rule from *Phillpotts*. The trial court denied plaintiff's motion for reconsideration, finding that it did not misapply the holding from *Phillpotts*. The trial court held that the rule from *Phillpotts* applied even if defendant was merely a lien creditor and not an execution creditor. The trial court also noted that defendant might have been an execution creditor, although it refused to consider defendant's Notice of Levy because the notice was not before the court when it decided the motion for summary disposition.

II. STANDARD OF REVIEW

This Court reviews de novo the trial court's decision to grant summary disposition under MCR 2.116(C)(8) and (C)(10). *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008); *Dalley v Dykema Gossett, PLLC*, 287 Mich App 296, 304; 788 NW2d 679 (2010).

"A motion brought under [MCR 2.116(C)(8)] tests the legal sufficiency of the complaint solely on the basis of the pleadings." *Dalley*, 287 Mich App at 304. "A court may grant summary disposition under MCR 2.116(C)(8) if '[t]he opposing party has failed to state a claim on which relief can be granted.'" *Id.*, quoting MCR 2.116(C)(8). In reviewing a motion brought under MCR 2.116(C)(8), "[t]he trial court and this Court must accept all well-pleaded factual allegations as true, construing them in a light most favorable to the nonmoving party." *Cummins v Robinson Twp*, 283 Mich App 677, 689; 770 NW2d 421 (2009). "Summary disposition on the basis of subrule (C)(8) should be granted only when the claim 'is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery.'" *Dalley*, 287 Mich App at 305, quoting *Kuhn v Secretary of State*, 228 Mich App 319, 324; 579 NW2d 101 (1998).

In contrast, a motion brought under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Id.* at 304 n 3. In reviewing the trial court's decision on a motion for summary disposition under MCR 2.116(C)(10), this Court "review[s] the evidence and all legitimate inferences in the light most favorable to the nonmoving party." *Coblentz v Novi*, 475 Mich 558, 567-568; 719 NW2d 73 (2006). Under MCR 2.116(C)(10), "[s]ummary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Latham*, 480 Mich at 111. The party moving for summary disposition under MCR 2.116(C)(10) initially has the burden of establishing that there is no genuine issue of material fact as to the identified issues. MCR 2.116(G)(3)(b)[1]; MCR 2.116(G)(4)[2]; *Coblentz*, 475 Mich at 568-569. The moving party must support his or her position with affidavits and documentary evidence. MCR 2.116(G)(3)(b); MCR 2.116(G)(4); *Coblentz*, 475 Mich at 568-569. If the moving party satisfies his or her burden, then the burden shifts to the nonmoving party to show the existence of a genuine issue of material fact. MCR 2.116(G)(4); *Coblentz*, 475 Mich at 569. The nonmoving party may not rest merely on his or her complaint in order to show the existence of a genuine issue of material fact. MCR 2.116(G)(4); *Coblentz*, 475 Mich at 569. Rather, the non-moving party must support its position with affidavits, depositions, admissions, and other forms of documentary evidence. MCR 2.116(G)(4); *Coblentz*, 475 Mich at 569.

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[1] MCR 2.116(G)(3)(b) provides that "[a]ffidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion are required . . . when judgment is sought based on subrule (C)(10)."

[2] MCR 2.116(G)(4) provides:

> [a] motion under subrule (C)(10) must specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact. When a motion under subrule (C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her.

III. PLAINTIFF'S EQUITABLE CONVERSION AND BALANCE OF EQUITIES ARGUMENTS

Plaintiff and defendant spent a great deal of time before the trial court discussing the issue of whether plaintiff was entitled to equitable relief or should be denied such relief on the basis of "unclean hands." An action to quiet title is equitable in nature. *Jonkers v Summit Twp*, 278 Mich App 263, 265; 747 NW2d 901 (2008). Thus, the defense of unclean hands was available to defendant. *Richards v Tibaldi*, 272 Mich App 522, 537; 726 NW2d 770 (2006). However, the trial court did not address the issue of the cleanliness of plaintiff's hands in making its ruling.

On appeal, plaintiff presents the arguments that (1) pursuant to the doctrine of equitable conversion, he had an equitable ownership interest in the property at the time defendant recorded its judgment lien; and (2) the trial court erred by finding that the balance of the equities in this case did not entitle plaintiff to relief.

As to the first argument, although plaintiff argued before the trial court that he held equitable title to the property at the time defendant recorded its judgment lien, he appeared to be arguing a theory that Butler held the property in trust for him, rather than specifically arguing the doctrine of equitable conversion. Additionally, the trial court made no ruling on the issue of plaintiff's equitable title or made any reference to the doctrine of equitable conversion. We are obliged only to review issues that are properly raised and preserved. See *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). As plaintiff's equitable conversion theory was neither raised before nor decided by the circuit court, we decline to address it on appeal. *Id.*

As for plaintiff's argument that the trial court erred in balancing the equities, we note that the trial court did not appear to engage in an explicit balancing of the equities at all during the motion hearing. However, plaintiff, in his motion for reconsideration, did allege that the trial court erred in balancing the equities. The trial court responded by stating that it balanced the equities and held that "Plaintiff's equities did not outweigh Defendant's," and noted that plaintiff could have prevented the instant action by ensuring that the 2006 warranty deed that would have re-conveyed the property from Butler Development to plaintiff was recorded. On the issue of equitable relief, the trial court also noted that defendant was unaware of plaintiff's alleged interest in the property, and that plaintiff's 2006 conveyance of the property to Butler Development was an attempt "to skirt the New Buffalo Township zoning requirements."

We find it unnecessary to address this argument in light of our conclusion that the trial court premised its grant of summary disposition on an erroneous legal principle. Because we vacate the trial court's grant on that ground, the issue of the balance of equities becomes moot, and we find it unnecessary to address this issue, which in any event, and despite the trial court's statement in its opinion and order denying plaintiff reconsideration, did not appear to play a role in the trial court's grant of summary disposition to defendant. See *Polkton*, 265 Mich App at 95.

IV. TRIAL COURT'S GRANT OF SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(8)

Although the trial court's order states that defendant's motion was granted pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10), the record reveals a lack of specificity concerning the trial court's grant of defendant's (C)(8) motion. The trial court stated:

> Other than that, I don't agree with Mr. O'Dowd and I'm going to deny the plaintiff's motion and grant the motions of the - - or the motion of the - - motions of the defendant.
>
> On the (C)(8) motion that tests the legal sufficiency of the complaint, and there I'll just dwell on paragraphs eight through 19 of the complaint, which sets forth the crux of the theory that the plaintiff is operating under.
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> And that is that they had this transaction where the plaintiff deed the property to Butler and its purpose and then that it was supposed to be deeded back, but it wasn't and in the intervening time, the lien was filed and the lien was recorded. [M Tr, 8.]

This is the sum total of what the trial court said about the (C)(8) motion, other than that it was granted.

Our de novo review of the trial court's grant of summary disposition leads us to conclude the trial court erred in granting summary disposition to defendant pursuant to MCR 2.116(C)(8). We conclude that plaintiff stated a prima facie quiet title claim. MCR 3.411(B)(2) requires that the complaint of a plaintiff seeking to determine an interest in land must allege "(a) the interest the plaintiff claims in the premises; (b) the interest the defendant claims in the premises; and (c) the facts establishing the superiority of the plaintiff's claim." Here, plaintiff's complaint alleges that plaintiff purchased the subject property, and maintained it since 2005, including paying for all improvements and real estate taxes. It further alleges that the conveyance to Butler was for the purpose of obtaining zoning approval, that the parties intended to transfer title back to plaintiff, that the deed prepared by Butler that was to be recorded in August of 2006 was lost and never recorded, that defendant claimed an interest in the property by virtue of its judgment lien, and that plaintiff's claim was superior to defendant's because Butler lacked ownership of the subject property at the time the lien attached. Taking these factual allegations as true and construing them in the light most favorable to plaintiff, we conclude that plaintiff set forth sufficient facts to state a claim to establish the superiority of his interest to the property, and thus the trial court erred in concluding that plaintiff's claim was "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Kuhn*, 228 Mich App at 324.

The record is somewhat unclear on this point, but to the extent that the trial court premised any part of its (C)(8) ruling on *Phillpotts*, 155 Mich at 336-337, such action was in error for the reasons set forth in the following section.

V. TRIAL COURT'S GRANT OF SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)

Regarding defendant's (C)(10) motion, the trial court first found that there was a question of fact concerning the existence of the unrecorded deed. We agree with the trial court. Plaintiff presented documentary evidence, including the affidavit of Butler's attorney, the electronic copy of the deed, emails between plaintiff's attorney and Butler's attorney, and the language of the quitclaim deed that purported to replace the lost deed, indicating that the deed was prepared after the Master Deed was recorded, and that Butler and plaintiff intended to re-convey the property back to plaintiff sometime in 2006. Although the deed was never recorded, defects in the formalities of a conveyance do not prevent it from being good as between the parties and third parties who lack statutorily-granted priority over unrecorded conveyances. See *Evans v Holloway Sand & Gravel, Inc*, 106 Mich App 70, 82; 308 NW2d 440 (1981).[3] It is proper for a trial court to examine the entire agreement between the parties in order to ascertain the intent to make a conveyance. *Id.* at 79. Although the theory that a conveyance occurred but was never recorded is not the only theory the evidence could support, a party opposing summary disposition is not required to rebut every possible theory that the evidence could support. *Detroit v GMC*, 233 Mich App 132, 139; 592 NW2d 732 (1998). This Court is liberal finding a genuine issue of material fact. *Jimkoski v Shupe*, 282 Mich App 1, 5; 763 NW2d 1 (2008). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the party opposing the grant of summary disposition, leaves open an issue upon which reasonable minds could differ. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). We therefore find no error in the trial court's conclusion that a question of fact existed concerning the existence of plaintiff's unrecorded interest.

The trial court, having found a question of fact related to plaintiff's interest in the property, sua sponte referred to *Phillpotts*, 155 Mich at 336-337, a case relied upon by neither party, in making its ruling:

> And then on the (C)(10) basis, I mean, the same facts. And in ruling, I'm relying on the Pritchard case. It's - - excuse me. Philpotts [sic] case. That's 155 Mich 333. It's not quite the same factually as this case, but the principals [sic] are the same.

[3] In *Evans*, this Court found that the language of a document entitled "Sales Agreement" supported the trial court's conclusion that the parties to the agreement had intended a present conveyance of a property interest (there, an easement or profit a prendre), notwithstanding the lack of formalities and lack of recordation. 106 Mich App at 81-82. This Court further found that the plaintiffs (who were not parties to the agreement) were not "subsequent purchasers in good faith" entitled to statutory priority, because they were aware of the sales agreement and its terms. *Id.* at 82. As noted *infra*, defendant's judgment lien in the instant case also did not afford it statutory priority, for other reasons, regardless of notice. The unrecorded deed was therefore effective as to defendant.

> And that is that if you don't record an interest so that the rest of the world knows about it, as could have been done in this case, then a party such as a judgment creditor, such as the bank in this case, is not subject to that unrecorded conveyance. And in order to have the conveyance used to the detriment of the bank, there'd have to be some showing of involvement of the bank, and that's not alleged, nor is it shown. And I think Mr. O'Dowd concedes that it - - they had nothing to do with it.
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> And therefore, I think the principals [sic] of the Philpotts [sic] case apply in this case to the unrecorded deed, if it existed, and I'm assuming for the purpose of this case that that's at least a question of fact. But it doesn't make any difference because even if it existed, it wasn't recorded, didn't give notice to the bank or others, and the bank intervened by recording its judgment lien, giving it a superior right to the reconveyance. And therefore I grant the (C)(8) and (C)(10) motions of the defendant and order that judgment be entered in favor of the defendant.

We find that the trial court erred in this ruling. To understand the trial court's error, it is important to understand (a) the nature and effect of the distinct liens that may exist in these circumstances; and (b) the precise type of lien that was at issue in this motion hearing. Further, it is important to note that while there may be a question of fact as to whether two different liens may exist on the subject property, as is more fully discussed below, only one was the subject of the parties' cross-motions for summary disposition: a judgment lien under the Michigan Judgment Lien Act (MJLA), MCL 600.2801 *et seq*.

Specifically, defendant had obtained a judgment lien pursuant to the MJLA which, when it recorded the notice of judgment lien, attached to all of the judgment debtor's (Butler's) interests in real property that Butler possessed at the time of recordation. MCL 600.2803. As noted, this is the only lien that was the subject of the summary disposition motions.

A judgment lien under the MJLA has a number of unique features. To begin with, the MJLA provides that there is no right to foreclosure under such a lien. MCL 600.2803. Rather, it provides that "[a]t the time the judgment debtor makes a conveyance . . ., sells under an executory contract, or refinances the interest in real property that is subject to the judgment lien, the judgment debtor shall pay the amount due to the judgment creditor . . . ." *Id.* Further, the MJLA provides that a judgment lien has priority over *liens* that are recorded *after* the judgment lien is recorded, with numerous exceptions. MCL 600.2807.

Importantly, the MJLA is silent as to a judgment lien's priority over *prior* unrecorded *conveyances*. The general rule is that where judgment creditors are not given specific statutory protection by the recording laws against prior unrecorded conveyances, those conveyances are entitled to priority over the subsequent lien of a judgment creditor, regardless of notice. See 66 Am Jur 2d Records and Recording Laws, § 134.

Independent of the MJLA, Chapter 60 of the Revised Judicature Act (RJA), MCL 600.6001 *et seq*., provides procedures for the collection of judgments and execution against real

estate to satisfy a judgment. MCL 600.6001 *et seq.*; *George v Sandor M. Gelman, PC*, 201 Mich App 474, 477; 506 NW2d 583 (1993).

> A judgment, by itself, does not create a lien against a debtor's property. Under the scheme provide in chapter 60, the creditor must first obtain a judgment for the amount owed, then execute that judgment against the debtor's property. A creditor may execute against real property owned by a debtor only after attempting to execute against the debtor's personalty and determining that the personal property is insufficient to meet the judgment amount. To place a lien against a debtor's real property, the creditor must deliver the writ of execution and a notice of levy against the property to the sheriff, who then records the notice of levy with the register of deeds to perfect the lien. [*George*, 201 Mich App at 477 (citations omitted).]

A judgment creditor that holds a lien under Chapter 60 that is perfected by recording the notice of levy (an "execution lien") gains priority over prior conveyances of which he lacks actual or constructive knowledge. MCL 600.6051.[4] Further, prior unrecorded conveyances are void against any subsequent bona fide purchaser in good faith. MCL 565.29.

A judgment creditor may pursue *both* a judgment lien under the MJLA and an execution lien under Chapter 60 of the RJA. *Thomas*, 290 Mich App at 414. "[T]he MJLA provides that '[a] judgment lien is in addition to and separate from any other remedy or interest created by law or contract.'" *Id.*; MCL 600.2817. A judgment lien under the MJLA and an execution lien under Chapter 60 are thus "two different mechanisms by which a judgment creditor can attempt collection on a judgment by going after real property." *Thomas*, 290 Mich App at 414.

However, contrary to the trial court's finding, Michigan law has not provided priority for *all* who lack notice of a prior unrecorded conveyance. If it had, there would be no need for a statute specifically extending such protection to bona fide purchasers in good faith, or to judgment creditors who levy and execute on a judgment (under Chapter 60 of the RJA) without notice of the prior conveyance. Additionally, no such broad grant of priority is found in the MJLA.

The Legislature is charged with knowledge of existing laws. *Hughes v Almena Twp*, 284 Mich App 50, 66; 771 NW2d 453 (2009). Provisions not included by the Legislature should not be included by the courts. *Mich Basic Prop Ins Ass'n v Office of Financial & Ins Regulation*, 288 Mich App 552, 560; 808 NW2d 456 (2010). Thus, this court will not read into a statute a provision giving judgment liens under the MJLA priority over all prior unrecorded conveyances. Further, the Legislature spoke on the issue of priority in the MJLA, and specifically stated that judgment liens have priority over certain subsequent *liens*. MCL 600.2807. It does not grant a

[4] Proper recordation of an interest provides constructive notice of that interest. *Houseman v Gerken*, 231 Mich 253, 255; 203 NW 841 (1925). Therefore, notice would only be disputed in the case of a prior unrecorded conveyance. See *Williams v Dean*, 356 Mich 426, 433; 97 NW2d 42 (1959).

judgment lien priority over all prior conveyances of which the judgment lienholder lacked notice. The maxim *expressio unius est exclusion alterius* thus bolsters our conclusion that the MJLA contains no such priority rule. See *AFSCME Council 25 v Detroit*, 267 Mich App 255, 260; 704 NW2d 712 (2005).

In *Phillpotts*, upon which the trial court relied, the Court noted that, under the version of the recording statute existing at the time (and indeed a similar rule exists today in MCL 600.6051), a judgment creditor who had executed and levied on the debtor's property was given priority over a prior unrecorded conveyance of which the creditor lacked notice. 155 Mich at 337. The Court stated, "[a] bona fide purchaser of a legal estate—and the judgment creditors here are to be regarded as bona fide purchasers—will be protected against the prior equitable title of another, of which he had no notice . . . ." *Id.*

The trial court in this case overstated the holding in *Phillpotts* by concluding that the principles of *Phillpotts* compelled a grant of summary disposition in favor of defendant. But it is clear from *Phillpotts* that the creditor's priority over an unrecorded conveyance was granted by statute. The plain language of the MJLA grants no such priority. Thus, having found that there was "at least a question of fact" as to the existence of the unrecorded deed, the trial court erred in granting summary disposition to defendant based on a priority rule that simply has no application to a judgment lien of this type. Simply put, if plaintiff owned the property at the time the judgment lien was recorded, then defendant's lien did not attach to the property—priority is not an issue.

When defendant responded to plaintiff's motion for reconsideration, it stated for the first time that it had levied and executed on plaintiff's property, although defendant incorrectly contended that it had levied *on the judgment lien*.[5] As stated above, liens under the MJLA provide no right to foreclose on the real property subject to the lien. To the extent that defendant may have executed and levied on the subject property to satisfy the judgment, this may have created a separate execution lien, perfected as to the date of recording of the notice of levy. MCL 600.6051; *Thomas*, 290 Mich App at 414. The issue of notice thus may be relevant to that execution lien, but not to a judgment lien under the MJLA, which was the sole subject of the summary disposition motions.[6] In any event, the trial court properly did not consider this

[5] Specifically, defendant presented evidence that on February 16, 2010, defendant obtained an order to seize Butler's property to satisfy the judgment. On March 3, 2010, a Notice of Levy was recorded on the subject property pursuant to that order.

[6] We note, without deciding the issue, that plaintiff has presented, in his motion for remand that accompanied this appeal, a document entitled "Summary Appraisal Report," which appears to have been prepared by an agent of defendant in 2007. This document states that "according to the developer, 3 lots have been sold to John Kelly" and further notes that "[t]he sale has not been recorded at the township or county level." As this report was prepared by defendant's agent before defendant obtained a judgment against Butler or perfected either lien, it arguably supports the inference that defendant had constructive notice of the conveyance to plaintiff. We further note that during discovery in this case, plaintiff served a defendant with a set of requests for

argument, as it was untimely. Our review of the trial court's grant of summary disposition is limited to the evidence that had been presented to the trial court at the time the motion was decided. *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 476; 776 NW2d 398 (2009).

Because the trial court erred in holding that plaintiff's claim was clearly unenforceable, and erred in granting summary disposition to defendant based on a legal principle that did not apply to defendant's judgment lien, we vacate the trial court's grant of summary disposition to defendant under MCR 2.116(C)(8) and (C)(10). Because we agree with the trial court that a question of fact existed as to plaintiff's interest in the subject property, we leave undisturbed the trial court's denial of summary disposition to plaintiff. *Gleason v MDOT*, 256 Mich App 1, 3; 662 NW2d 822 (2003) ("A trial court's ruling may be upheld on appeal where the right result issued, albeit for the wrong reason").

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter
/s/ Mark T. Boonstra

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admissions, interrogatories, and document requests. Admission Request No. 14 asked defendant to "Admit that Defendant was aware of Plaintiff's interests in the subject property when it filed is [sic] Notice of Judgment Lien against the subject property on November 23, 2009." Defendant answered "Denied for the reason that it is untrue." Interrogatory No. 14 then asked defendant to provide documentary support for any answer to Admission Request No. 14 other than an unequivocal admission. Defendant responded as follows:

> Fifth Third has inspected the property on several occasions and the inspections did not provide sufficient information as to whether Plaintiff did or did not take any action regarding the subject property. Furthermore, based upon the fact that Butler Development LLC was the owner of the subject property pursuant to a Warranty Deed dated February 7, 2006, and that Butler Development paid the 2007 winter taxes on the subject property, it is reasonable to assume that Butler Development maintained the subject property.

Defendant's attached documents included tax records, but did not mention or provide the 2007 appraisal. On remand, the issue of defendant's notice should be more fully explored, especially in light of this appraisal that occurred before *either* lien was recorded.