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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2198**

Estate of Lawrence A. Werner,
by Vivian Eileen Werner, Personal Representative,
Appellant,

vs.

Kreg A. Werner,
Respondent,

and

Kreg A. Werner, third party plaintiff,
Respondent,

vs.

Vivian Eileen Werner, third party defendant,
Appellant.

**Filed August 20, 2012
Reversed and remanded
Peterson, Judge**

Scott County District Court
File No. 70-CV-08-23679

William G. Peterson, Peterson Law Office, P.A., Bloomington, Minnesota (for appellant)

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Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and
Hudson, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this real-estate conveyance dispute, the district court, by summary judgment based on a quit-claim deed, awarded property to the buyer under a contract for deed. On appeal, the personal representative of the estate of the seller under the contract for deed argues that (1) fact issues exist regarding whether the quit-claim deed was signed as security, rather than to convey the property; and (2) buyer's slander-of-title counterclaim fails to state a claim on which relief can be granted because the claim is based on seller's notice of lis pendens, the notice of lis pendens is legitimate, and the elements of slander of title have not been shown. We reverse and remand.

FACTS

On October 28, 1997, Lawrence A. Werner (decedent) entered into a contract for deed to sell an eight-unit apartment building (the property) to his son, respondent Kreg A. Werner, for \$200,000, to be paid in monthly installments of \$1,350 for 30 years. The contract for deed was registered on November 10, 1997.

In 2001, respondent sought a bank loan to make improvements on the property. As part of the loan transaction, the bank required decedent to assign his interest in the contract for deed to the bank. An assignment, which was executed on May 29, 2001, states, "This Assignment is made as security for the obligation of [respondent] stated in the Mortgage Note and Statutory Mortgage, Security Agreement, and Fixture Financing Statement made in favor of [the bank] on May 30, 2001." Decedent and his wife, Vivian Werner, also executed a quit-claim deed on May 31, 2001, which states, "FOR

VALUABLE CONSIDERATION, [decedent] and Vivian E. Werner Husband and Wife Grantor, hereby conveys and quitclaims to [the bank] Grantee, a banking Corporation under the laws of Minnesota real property in Scott County, Minnesota, described as follows: See Exhibit A, attached hereto and incorporated by reference herein.” Exhibit A contained the legal description of the property. The bank registered the assignment and the quit-claim deed on December 31, 2003.

On June 7, 2001, respondent executed a term loan agreement to borrow \$126,500.

The loan agreement states:

To secure the Mortgage Note, Borrower shall execute a Statutory Mortgage, Security Agreement and Fixture Financing Statement (“Mortgage”), an Assignment of Leases and Rents (“Assignment”) and a Hazardous Waste Indemnification. The Mortgage Note will also be conditioned upon [decedent] and Vivian E. Werner providing [the bank] with a Security Agreement in a form satisfactory to [the bank]; upon [decedent] and Vivian E. Werner providing Lender with an Assignment of Contract for Deed assigning Lawrence A. Werner’s interest as Seller in that Contract for Deed signed by [decedent] as Seller and [respondent] as Purchaser on October 28, 1997 and recorded on November 10, 1997 . . . ; [and] upon [decedent] and Vivian E. Werner making a Quit Claim Deed in favor of Lender for the Premises *to take effect according to the terms provided for in said Security Agreement[.]* (Emphasis added.)

The loan agreement also states that the bank’s obligation to make any advance to respondent is subject to the condition precedent that the bank

shall have received: . . . A Security Agreement from [decedent] and Vivian E. Werner regarding the Contract for Deed; An Assignment of the Contract for Deed from [decedent] and Vivian E. Werner; a Quit Claim Deed from [decedent] and Vivian E. Werner in favor of Lender for [the

property] *to take effect according to the terms provided for in the Security Agreement referenced above*; (emphasis added).

As required under the loan agreement, respondent also executed on June 7, 2001, a statutory mortgage, security agreement, and fixture financing statement and an assignment of rents and leases.

Respondent continued to make monthly payments of \$1,350 to decedent until decedent's death in April 2008. Appellant Estate of Lawrence A. Werner, through personal representative Vivian Werner, asked respondent to resume making payments. Respondent determined that title to the property had been transferred to the bank as part of the financing arrangements in 2001 and obtained a quit-claim deed from the bank, which transferred all of the bank's interest in the property to respondent.

Respondent stated in an affidavit:

3. After working with the property and understanding all of the problems associated with the property, I called [decedent] and told him I was going to give the property back to him. It was going to take a significant investment of time and about \$230,000 of additional funds to renovate the property and get the property to a point where it even met the building code.

4. The Carver County Housing and Redevelopment Authority advised me that I needed to hold title to get the necessary financing to renovate the property.

5. [Decedent] didn't want the property back, and he did not want to be obligated on the promissory note. He agreed to transfer all of his interest in the property to me so I would be eligible to obtain financing and apply for grants for the renovation.

6. [Decedent] asked me to continue sending him money while he was alive, because he needed the money for

his everyday expenses. I agreed. There was no agreement to send any money to his second wife (Vivian Werner) after his death. There is no writing setting forth this agreement.

7. [Decedent] and his second wife, signed both an assignment of the contract for deed and a quitclaim deed on May 29, 2001 and May 31, 2001 respectively.

8. [Decedent] advised me that he had transferred title in the property to me, and I advised the bank and HRA.

In October 2008, appellant initiated this action alleging that it is the rightful owner of the property and that the bank wrongfully transferred the property to respondent based on respondent's fraudulent conduct. The complaint states five claims: quiet title, fraud, conversion, constructive trust, and unjust enrichment. Appellant also filed a notice of lis pendens asserting a claim to the property under Minn. Stat. § 557.02 (2010). Respondent denied the allegations and asserted a counterclaim, alleging slander of title based on the filing of the notice of lis pendens.

Respondent moved for summary judgment, seeking dismissal of appellant's claims and judgment against appellant and Vivian Werner on his slander-of-title counterclaim. By order filed January 4, 2010, the district court granted partial summary judgment for respondent, dismissing appellant's claims with prejudice but denying respondent's motion with respect to his counterclaim.

On January 26, 2010, appellant filed a motion to vacate the partial summary judgment for respondent on the ground of newly discovered evidence. The newly discovered evidence included a security agreement signed by decedent and Vivian E.

Werner, but not by the bank, and a May 30, 2001 letter from the bank's attorney to decedent.

The security agreement, which identifies decedent and Vivian E. Werner as debtor, states:

If [respondent] defaults on the Note according to the terms of the Statutory Mortgage, Security Agreement, and Fixture Financing Statement made on or about May 29, 2001 in favor of [the bank] ("the Mortgage"), (and fails to cure such default within the time permitted by the Note and the Mortgage), or if Debtor defaults with respect to any of the terms, conditions and warranties contained herein and such default is not cured within thirty days after written notice from Secured Party to Debtor, Secured Party shall thereafter be entitled to enforce its rights under the Assignment of Contract for Deed referenced above, to collect all payments due under the Contract for Deed from [respondent]. Further, the Secured Party shall then be entitled to record a Quit claim Deed from Debtor to the Secured Party . . . and thereby receive Debtor's interest as Seller under the Contract for Deed.

The letter from the bank's attorney to decedent refers to enclosed copies of the quit-claim deed and security agreement and states:

The Quit Claim Deed is unsigned and we are unable to proceed with this loan transaction until it is. The Security Agreement which will be signed at the closing and without which funds will not be distributed provides that in the General Terms and Conditions section (Subparagraph iv) as follows: "If [respondent] defaults . . . or if Debtor defaults . . . the Secured Party shall then be entitled to record a Quit Claim Deed from Debtor." Therefore by issuing a Quit Claim Deed to [the bank] at this time, you will not be conveying the property but merely providing them with sufficient security so that they can issue this loan.

Further, I would bring to your attention the fact that these are the standard Documents which are created when a

vendor and Vendee under a Contract for Deed are cooperating so that the Vendee can be able to mortgage said property.

By order filed May 24, 2010, the district court denied appellant's motion to vacate the summary judgment. The court found that appellant could have discovered the security agreement and related documents earlier with the exercise of proper and diligent use of discovery techniques and, therefore, the documents did not constitute newly discovered evidence. The district court also found that, even if the documents constituted newly discovered evidence, they were not material because the security agreement was not signed by the bank and could not be used to alter an unambiguous quit-claim deed. Finally, the district court rejected appellant's fraud claim because it was unsupported by any evidence.

After a court trial, the district court found for respondent on his slander-of-title claim against appellant but dismissed the claim against Vivian E. Werner individually. The district court ordered appellant to pay special damages to respondent in an amount to be determined based on attorney fees and to "remove and discharge the lis pendens registered against the Property." The district court awarded respondent \$33,678.81 in special damages, \$32,035 for attorney fees and \$1,643.81 for costs and disbursements.

Appellant filed two appeals, one challenging the order directing discharge of the notice of lis pendens and this appeal from the final judgment. By order opinion, this court dismissed the appeal challenging the order directing discharge of the notice of lis pendens, noting that the decision of this appeal would necessarily resolve that issue.

DECISION

I.

“[Appellate courts] review a district court’s summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). “On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

A written instrument, including a deed, can be reformed by a court using its equitable powers only when it is proved that (1) there was a valid agreement between the parties expressing their real intentions; (2) the written instrument allegedly evidencing the agreement failed to express the real intentions of the parties; and (3) this failure was due to a mutual mistake of the parties, or a unilateral mistake accompanied by fraud or inequitable conduct by the other party.

The evidence supporting reformation of a written instrument, including a deed, must be consistent, clear, unequivocal, and convincing.

Theros v. Phillips, 256 N.W.2d 852, 857 (Minn. 1977) (citation omitted).

The parol-evidence rule is not a rule of evidence, but a substantive rule of contract interpretation. It prohibits the admission of extrinsic evidence of prior or contemporaneous oral agreements, or prior written agreements, to explain the meaning of a contract when the parties have reduced their agreement to an unambiguous integrated writing. Accordingly, when parties reduce their agreement to writing, parol evidence is ordinarily inadmissible to vary, contradict, or alter the written agreement. Despite being primarily a rule

of contract interpretation, the rule's prohibition on the use of extrinsic evidence to explain the meaning of a document's language applies to deeds. Thus, only if a deed is ambiguous can evidence other than its language be considered to determine its meaning. A deed is ambiguous if, judged by its language alone and without resort to extrinsic evidence, it is reasonably susceptible to more than one meaning. And whether a deed is ambiguous is also a question of law subject to de novo review.

Danielson v. Danielson, 721 N.W.2d 335, 338 (Minn. App. 2006) (quotations and citations omitted).

But, “[i]t is well established that where contracts relating to the same transaction are put into several instruments they will be read together and each will be construed with reference to the other.” *Anchor Cas. Co. v. Bird Island Produce, Inc.*, 249 Minn. 137, 146, 82 N.W.2d 48, 54 (1957). “The prohibition of the parol evidence rule is not against the use of extrinsic circumstances for the purpose of interpretation but against making them the instruments of contradiction of an expressed contractual intent.” *Id.* at 147, 82 N.W.2d at 55 (quotation omitted). The rules for construing contracts apply to deeds. *La Cook Farm Land Co. v. N. Lumber Co.*, 159 Minn. 523, 527, 200 N.W. 801, 802 (1924).

The district court stated: “The May 31, 2001, quitclaim deed did not contain any limitations, exceptions, or reservations; it did not reference the Security Agreement; it did not specify a future or conditional conveyance. It was a complete transfer of all of the grantors’ interest in the property to the grantee, who subsequently registered the deed.” The district court concluded that the language of the quit-claim deed was unambiguous, declined to consider extrinsic evidence, and granted partial summary judgment for respondent based on the quit-claim deed’s plain language.

Although, by itself, the quit-claim deed was unambiguous, the district court's analysis does not demonstrate that the court read the deed together with the other documents related to respondent's loan transaction and construed the deed with reference to the other documents. The assignment of the contract for deed states on its face that it is to provide security for the loan. And the term loan agreement refers to a security agreement and states that the quit-claim deed from decedent and Vivian E. Werner in favor of the bank is "to take effect according to the terms provided for in said Security Agreement." Also, although the term loan agreement specifically required a quit-claim deed from decedent and Vivian E. Werner in favor of the bank, the bank's vice president testified in his deposition that "[the bank] shouldn't be the owner of the property," and the bank moved quickly to transfer the property to respondent after becoming aware that the property had been deeded to the bank. All of this evidence was before the district court when it decided the summary-judgment motion and was sufficient to create a fact issue as to whether the quit-claim deed was intended to effect a transfer of the property to the bank or accomplish some other purpose. Accordingly, we reverse the summary judgment for respondent and remand for further proceedings. Because the evidence before the district court when it decided the summary-judgment motion was sufficient to create a fact issue that precludes summary judgment, we need not address whether the district court erred in denying appellant's motion to vacate the summary judgment based on newly discovered evidence.

Appellant argues that respondent's affidavit is inadmissible parol evidence. Because there is a fact issue as to the purpose the quit-claim deed was intended to

accomplish, the parol evidence rule does not bar consideration of respondent's version of events.

II.

To prevail in a slander-of-title action, a plaintiff must show (1) a false statement concerning the plaintiff's real property, (2) published to others, (3) maliciously, (4) causing special damages. *Paidar v. Hughes*, 615 N.W.2d 276, 279-80 (Minn. 2000). “Special damages are those that are the natural, but not the necessary and inevitable result of a wrongful act.” *Id.* at 277 n.1 (quotation omitted). Attorney fees incurred to remove a cloud on title constitute special damages in a slander-of-title action. *Id.* at 281.

Filing a notice of lis pendens can be the basis for a slander-of-title claim if the notice contains false information and the filing is motivated by malice. *Bly v. Gensmer*, 386 N.W.2d 767, 769 (Minn. App. 1986). Malice requires “a reckless disregard concerning the truth or falsity of a matter.” *Brickner v. One Land Dev. Co.*, 742 N.W.2d 706, 711 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Mar. 18, 2008). The malice element in a slander-of-title claim requires a disparaging statement to be made without a good-faith belief in its truth. *Quevli Farms, Inc. v. Union Sav. Bank & Trust Co.*, 178 Minn. 27, 30, 226 N.W. 191, 192 (1929) (stating that slander-of-title action arises from “a malicious and groundless disparagement of the plaintiff's title or property” and false statements “made without probable cause therefor”). A slander-of-title claim fails if the party acts in good faith and records an instrument that the party has a right to file. *Kelly v. First State Bank of Rothsay*, 145 Minn. 331, 333, 177 N.W. 347, 347-48 (1920).

Respondent's claim that decedent deeded the property to respondent is inconsistent with the language of the quit-claim deed, which conveys the property to the bank, and appellant presented evidence supporting its position that the quit-claim deed was intended only as security for the loan transaction. There is no evidence that the notice of lis pendens was filed in bad faith. Respondent's slander-of-title claim, therefore, fails, and the judgment in favor of respondent on that claim and for special damages is reversed.

Reversed and remanded.