STATE OF MICHIGAN

COURT OF APPEALS

NATIONSBANC MORTGAGE CORPORATION OF GEORGIA, f/k/a CITIZENS AND SOUTHERN MORTGAGE CORPORATION,

Plaintiff-Appellant,

v

JERRY LUPTAK, JERRY D. LUPTAK REVOCABLE TRUST, NINA LUPTAK, NINA D. LUPTAK REVOCABLE TRUST, HAROLD BEZNOS, HAROLD BEZNOS REVOCABLE TRUST, NORMAN BEZNOS, NORMAN BEZNOS REVOCABLE TRUST, MAURICE BEZNOS, MAURICE JERRY BEZNOS REVOCABLE TRUST and SHELDON KORN,

Defendants,

and

THE KORN FAMILY LIMITED PARTNERSHIP,

Garnishee Defendant-Appellee.

FOR PUBLICATION
December 12, 2000
9:10 a.m.

No. 212634
Oakland Circuit Court
LC No. 93-453050-CZ

Updated Copy
February 2, 2001

Before: Holbrook, Jr., P.J., and Kelly and Collins, JJ.

HOLBROOK, JR., P.J.

Plaintiff in this garnishment action appeals as of right from the trial court's order granting summary disposition in favor of garnishee defendant the Korn Family Limited Partnership (KFLP) pursuant to MCR 2.116(C)(8). We affirm.

I. Factual Background and Procedural History

Sheldon Korn, the Luptak defendants, and the Beznos defendants[1] were guarantors of a mortgage loan procured from plaintiff by Beztak Homes, Inc., a Michigan corporation, for the development of a residential subdivision in Florida. Following Beztak's default on the mortgage loan, plaintiff instituted foreclosure proceedings in Florida. In 1992, a final judgment of foreclosure was entered against Beztak. Subsequently, plaintiff instituted proceedings against Sheldon Korn and the Luptak and Beznos defendants in the Circuit Court for Broward County, Florida, and obtained a judgment against them, jointly and severally, in the amount of $4,295,619.61.

In April 1993, plaintiff instituted proceedings in the Oakland Circuit Court, seeking to make the Florida judgment against the guarantors a domestic judgment. The Luptak and Beznos defendants later entered into a settlement agreement with plaintiff, and trial was held for the sole purpose of determining Sheldon Korn's liability. In March 1996, the trial court entered judgment against Sheldon Korn in the amount of $2,267,800.

Following entry of the judgment, plaintiff held a creditor's examination of Sheldon Korn. The creditor's examination revealed that, one week after plaintiff had demanded full payment from Beztak in 1991, Sheldon Korn had formed the KFLP and had transferred to the KFLP his interests in five real estate partnerships. Plaintiff immediately served the KFLP with a writ of nonperiodic garnishment. The KFLP denied that it was indebted to Sheldon Korn or that it possessed or controlled any property belonging to Sheldon Korn. The trial court subsequently entered an order granting the KFLP's motion for summary disposition, holding that (1) the writ of garnishment did not provide adequate notice to the KFLP of the basis for plaintiff's garnishment

claim, and (2) plaintiff was not permitted to pursue a fraudulent conveyance claim under the Uniform Fraudulent Conveyance Act (UFCA), MCL 566.11 *et seq*.; MSA 26.881 *et seq*., within the context of the garnishment proceedings.

II. Standards of Review

This Court reviews decisions on motions for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 490; 579 NW2d 411 (1998). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

> All factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. The motion 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. [*Kuhn v Secretary of State*, 228 Mich App 319, 324; 579 NW2d 101 (1998)(citation omitted).]

Additionally, this appeal presents questions concerning the interpretation of court rules. "Interpretation of the court rules presents a question of law, which is reviewed de novo." *Waatti & Sons Electric Co v Dehko*, 230 Mich App 582, 586; 584 NW2d 372 (1998).

III. Whether the Writ of Garnishment Provided Adequate Notice to Garnishee Defendant of the Basis for Plaintiff 's Garnishment Claim

Garnishment actions are authorized by statute. MCL 600.4011(1); MSA 27A.4011(1). The court may exercise its garnishment power only in accordance with the Michigan Court Rules. MCL 600.4011(2); MSA 27A.4011(2); *Waatti, supra* at 587; *Royal York of Plymouth Ass'n v Coldwell Banker Schweitzer Real Estate Services*, 201 Mich App 301, 305; 506 NW2d

279 (1993). MCR 3.101 governs postjudgment garnishment proceedings, and subrule 3.101(G)(1) delineates the various categories of items for which a garnishee is liable. Plaintiff argued below that the KFLP is liable pursuant to MCR 3.101(G)(1)(h), which provides that the garnishee is liable for

> all tangible or intangible property of the defendant that, when the writ is served on the garnishee, the garnishee holds by conveyance, transfer, or title that is void as to creditors of the defendant, whether or not the defendant could maintain an action against the garnishee to recover the property . . . .

The trial court granted the KFLP's motion for summary disposition in part on the basis of its conclusion that the writ of garnishment served on the KFLP provided no notice of plaintiff's claim of fraudulent conveyance. The court reasoned, in part, that summary disposition was proper because plaintiff's writ neither indicates that the property at issue was transferred to the KFLP "by a void transaction" nor "state[s] the facts on which plaintiff relies and the allegations necessary to inform the limited partnership of the pleader's claims, MCR 2.111(B)(1)." We disagree.

MCR 3.101(M)(2) provides that the plaintiff's verified statement serves as the "complaint" against the garnishee defendant, that the garnishee defendant's disclosure serves as the answer, and that "[t]he garnishee's liability to the plaintiff shall be tried on the issues thus framed." MCR 3.101(D) specifically sets forth the allegations that must be included in the verified statement:

> (1) that a judgment has been entered against the defendant and remains unsatisfied;

(2) the amount of the judgment and the amount remaining unpaid;

(3) that the person signing the verified statement knows or has good reason to believe that

(a) a named person has control of property belonging to the defendant,

(b) a named person is indebted to the defendant, or

(c) a named person is obligated to make periodic payments to the defendant.

Plaintiff's verified statement included each of the required allegations, including the statement that "the garnishee possesses or controls property belonging to the defendant."

The garnishment proceeding "complaint," as contemplated by MCR 3.101, is not required to contain specific information regarding the debts or property that are subject to the writ. MCR 2.111(B) generally requires that a complaint contain a "statement of the facts" and the "specific allegations necessary reasonably to inform the adverse party of the nature of the claims" against it. The verified statement submitted in the instant case complies with MCR 2.111(B) by setting forth the pertinent information concerning the judgment against Sheldon Korn and the specific allegation that the KFLP possessed or controlled property belonging to Sheldon Korn. This result makes particular sense in light of MCR 3.101(H)(1), which requires the garnishee defendant to file a disclosure "revealing the garnishee's liability to the defendant as specified in subrule (G)(1) . . . ."

Moreover, as a general rule of construction, when two statutes or provisions conflict and one is specific while the other is more general, the specific statute or provision prevails. *Haberl v Rose*, 225 Mich App 254, 261-262; 570 NW2d 664 (1997). Accordingly, if and to the extent

that MCR 3.101(D) and (M) conflict with MCR 2.111(B), MCR 3.101, which specifically governs garnishment proceedings, prevails. See *LeDuff v Auto Club Ins Ass'n*, 212 Mich App 13, 17-18; 536 NW2d 812 (1995).

Therefore, because plaintiff complied with the requirements of the court rule, we conclude that summary disposition was not properly granted on the basis of a lack of notice.

IV. Whether Plaintiff Has Properly Stated a Fraudulent Conveyance Claim

The trial court also held that the KFLP was entitled to summary disposition because "a fraudulent conveyance is merely a voidable transaction and must be set aside using the proper procedure." The trial court noted that plaintiff's garnishment claim pursuant to MCR 3.101(G)(1)(h) was based on the UFCA,[2] and held that the KFLP was not subject to liability under MCR 3.101(G)(1)(h) until the conveyance to it from Sheldon Korn had been declared void pursuant to the UFCA. We agree.

MCR 3.101(G)(1)(h) clearly indicates that it applies only to conveyances that are *void* as to creditors at the time the writ is served on the garnishee defendant. Given the legal import attached to the term "void," and crediting the Supreme Court with full knowledge of such significance, we read the court rule as requiring a previous judicial determination that the transfer at issue is indeed void.

We also believe that such a reading is consistent with the requirements set forth in MCR 3.101(D) regarding the statement of claim made in a garnishment proceeding. Given the limited information that is required to be set forth in the verified statement, we believe that requiring a plaintiff to specifically allege the factual basis for a claim of fraudulent conveyance in a separate

proceeding comports with due process guarantees. Without such specific pleadings, the garnishee's ability to resist a mistaken deprivation of property is severely compromised. This is especially so when the garnishee was not even a named party in the prior lawsuit and judgment from which the garnishment proceeding stems.[3]

In the instant case, the conveyance from Sheldon Korn to the KFLP had not been declared "void."[4] Accordingly, we conclude that summary disposition was appropriately granted.

Affirmed.

Collins, J., concurred.

/s/ Donald E. Holbrook, Jr.
/s/ Jeffrey G. Collins

[1] The Luptak and Beznos defendants and defendant Sheldon Korn are not participants in the instant appeal.

[2] The UFCA has recently been repealed, MCL 566.43; MSA 26.895(13), and was replaced by the similar Uniform Fraudulent Transfer Act (UFTA), MCL 566.31 *et seq.*; MSA 26.895(1) *et seq.*, effective December 30, 1998. 1998 PA 434, § 13.

[3] We do believe, however, that if the parties so agreed, adjudication of a fraudulent conveyance claim could be disposed of in garnishment proceedings, assuming proper notice of the issues in controversy.

[4] We note that the UFTA refers to fraudulent transfers as being "voidable" under the act, see MCL 566.38(1), (2), (5), and (6); MSA 26.895(8)(1), (2), (5), and (6), and specifically provides a statute of limitations for "[*a*] *cause of action . . . under this act*," MCL 566.39; MSA 26.895(9) (emphasis supplied).