

STATE OF MICHIGAN
COURT OF APPEALS

SPECIAL PROPERTY VI LLC,

Plaintiff-Appellee,

FOR PUBLICATION
January 11, 2007
9:00 a.m.

v

No. 271195
Wayne Circuit Court
LC No. 04-434971-CH

EDWARD WOODRUFF and BARBARA T.
BOYKIN,

Defendants,

Official Reported Version

and

NEW CENTURY MORTGAGE CORPORATION,

Defendant-Appellant.

Before: Owens, P.J., and White and Hoekstra, JJ.

HOEKSTRA, J.

In this action to quiet title, defendant New Century Mortgage Corporation (New Century) appeals as of right the trial court's order denying its motion for summary disposition and granting summary disposition in favor of plaintiff. We reverse and remand.

I. Basic Facts and Procedural History

Kevin and Robert Lancaster purchased the property at issue here in 1989 and sold the property to James Woods in 1994 under a land contract. After Woods died in 1997 without having completed the contract, the Lancasters agreed to allow Woods's daughter, Natasha Harris, to complete the contract on behalf of her father. Harris, however, ultimately defaulted, and the Lancasters conveyed the property to defendant Edward Woodruff by a quitclaim deed dated April 2, 2002. Woodruff in turn, on April 18, 2003, mortgaged the property to Best Rate Funding Corporation, which assigned its interest in the property to New Century that same day.

The instant dispute concerning the validity of New Century's interest against that claimed by plaintiff arises from a warranty deed purporting to convey the property from the Lancasters to defendant Barbara Boykin on March 3, 2001. Plaintiff relied on this deed, which predates that

granting title to the property to Woodruff, in accepting assignment of a land contract and a warranty deed from Boykin on May 13, 2002.

Again relying on the March 2001 deed from the Lancasters to Boykin, plaintiff filed the instant suit to quiet title to the property in November 2004.¹ In its complaint, plaintiff alleged that the April 2002 deed from the Lancasters to Woodruff was a forgery and thus invalid against the interest conveyed to plaintiff by Boykin in May 2002. During his deposition testimony, however, Mark Lancaster verified the signatures of both himself and his father, Robert, and expressly recalled having conveyed the property to Woodruff in April 2002. Mark also rejected the grantor signatures found on the March 3, 2001, warranty deed, stating that they were not those of himself and his father, and denied ever having conveyed the property to Boykin, whom he indicated he did not know. Boykin similarly indicated at her deposition that she did not know the Lancasters and denied having accepted title to the property from them in exchange for the \$22,000 recited as consideration for the property in the March 3, 2001, deed purporting to convey the property to her. Rather, Boykin testified, she received the deed from Woodruff, who she indicated had solicited her aid as a straw person in order to obtain financing for the property.

Following the close of discovery, both plaintiff and New Century moved for summary disposition under MCR 2.116(C)(10). Relying on the deposition testimony of Mark Lancaster and Barbara Boykin, New Century argued that there was no genuine issue of material fact regarding the forged nature of the March 2001 warranty deed purporting to convey the property from the Lancasters to Boykin. Thus, New Century argued, because plaintiff's interest in the property was dependent on the validity of this deed, New Century was entitled to summary disposition of plaintiff's action to quiet title.

In contrast, plaintiff asserted that the undisputed facts required that summary disposition be granted in its favor. Specifically, plaintiff asserted that it was not disputed that the April 2002 quitclaim deed from the Lancasters to Woodruff was not of record at the time plaintiff accepted an interest in the property from Boykin. Thus, plaintiff argued, there was no question that it was a bona fide purchaser for value without notice under MCL 565.29 and, therefore, held title to the property free from any claim by New Century. Noting that a portion of the proceeds given by it to Boykin was used to pay taxes owed on the property, and that the March 2001 warranty deed to Boykin was of record when Woodruff mortgaged the property to Best Rate Funding Corporation, plaintiff further argued that the equities favored the quieting of title in its name over that of New Century. The trial court, relying on the fact that a "tax interest" had been paid with monies provided by plaintiff, and that plaintiff had been first to record its claimed interest in the property, agreed and ordered that title to the property be quieted in plaintiff.

II. Analysis

¹ Plaintiff also sought relief against both Boykin and Woodruff for unjust enrichment and against Boykin alone for breach of the warranties of title made by her in the May 2002 deed. Those claims are not, however, at issue in this appeal.

On appeal, New Century argues that the trial court erred by denying its motion for summary disposition and quieting title to the property in plaintiff. We agree.

This Court reviews de novo equitable actions to quiet title. *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004). We also review de novo a trial court's determination regarding a motion for summary disposition. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim and is properly granted if the evidence submitted by the parties demonstrates that there is no genuine issue regarding any material fact. *Id.*; *Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397; 605 NW2d 685 (1999).

This Court has made clear that the plaintiff in a quiet-title action has the initial burden of establishing a prima facie case of title, *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999), and that summary disposition in favor of the defendant is properly entered if the plaintiff fails to carry this burden, *Ray v Bentley*, 39 Mich App 578, 579; 197 NW2d 827 (1972). Consequently, to avoid summary disposition of its claim to quiet title, it was incumbent on plaintiff to establish its title in the subject property by admissible evidence. On review de novo, we conclude that plaintiff failed to meet this burden and that summary disposition in favor of New Century was, therefore, proper.

As noted earlier, New Century presented evidence to indicate that the chain of title through which plaintiff claims its interest in the property fraudulently arose through forgery of a deed purporting to convey the property to Boykin. In response, plaintiff offered nothing to dispute the forged nature of this deed, arguing instead that it was insulated from any fraud in its chain of title as a bona fide purchaser without notice. It is well settled, however, that "[t]here can be no such thing as a bona fide holder under a forged deed, whose good faith confers any rights against the party whose name has been forged, or those claiming under him." *VanderWall v Midkiff*, 166 Mich App 668, 685; 421 NW2d 263 (1988), citing *Horvath v Nat'l Mortgage Co*, 238 Mich 354, 360; 213 NW 202 (1927). To the contrary, "[w]here a deed is forged, those innocently acquiring interests under the forged deed are in no better position as to title than if they had purchased with notice." *VanderWall, supra* at 685. Thus, as a matter of law, plaintiff can claim no interest in the property through Boykin's conveyance to it.

That plaintiff recorded its claimed interest in the property before New Century does not change this result because "the recording of an instrument cannot, of itself, make an invalid grant valid." *von Meding v Strahl*, 319 Mich 598, 609; 30 NW2d 363 (1948). Moreover, while it is not disputed that a portion of the proceeds given by plaintiff as consideration for the conveyance from Boykin were used to pay taxes then owed on the property, plaintiff failed, both below and on appeal, to provide any substantive argument or authority to support that this fact somehow sustains its claim of title to the property. Cf. *Horvath, supra* at 356-357, 361 (setting aside a warranty deed granted under a previously forged conveyance, despite the payment of taxes as consideration for that deed); see also *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003) (if a party gives only cursory treatment to an issue, with little or no citation of supporting authority, this Court may deem the issue abandoned). Consequently, we conclude that plaintiff has failed to meet its burden of establishing a prima facie claim of title, or any other interest, in the property sufficient to preclude summary disposition of its claim in favor of New Century. We therefore reverse the trial court's order quieting title to the property in

plaintiff's name and remand this matter for the entry of an order granting summary disposition in favor of New Century. *Beulah Hoagland, supra* at 550; *Ray, supra* at 579. Because plaintiff has failed to demonstrate an interest in the property that is valid or otherwise superior to that claimed by New Century, we further direct the trial court on remand to enter a judgment providing that New Century holds its claimed interest in the property unencumbered by any right, claim, or interest of plaintiff.

Reversed and remanded for the entry of an order and judgment granting summary disposition in favor of defendant New Century and providing that New Century holds its claimed interest in the property unencumbered by any right, claim, or interest of plaintiff. We do not retain jurisdiction.

Owens, P.J., concurred.

/s/ Donald S. Owens

/s/ Joel P. Hoekstra