

STATE OF MICHIGAN
COURT OF APPEALS

INSURED CONCEPTS, INC. f/k/a
PROFESSIONAL INSURANCE CONCEPTS,
INC., LEONARD R. J. KYLE and FREDERICK J.
BONCHER,

UNPUBLISHED
August 12, 1997

Plaintiffs/Counter-Defendants,

v

No. 192165
Kent Circuit Court
LC No. 92-077150-CH

THOMAS J. NAJAR,

Defendant/Counter-Plaintiff/
Cross-Defendant-Appellant,

and

KATHY J. NAJAR a/k/a KATHY J. WAGNER,

Defendant/Counter-Plaintiff/
Cross-Plaintiff-Appellee,

and

GREGORY G. PRASHER and SCHENK,
BONCHER & PRASHER, P.C.,

Third-Party Defendants.

Before: Saad, P.J., and Neff and Reilly, JJ.

PER CURIAM.

Thomas J. Najar appeals as of right from a judgment entered in favor of Kathy J. Wagner on her cross-claim and awarding her \$22,910.87 in damages for slander of title. We reverse and remand for entry of a judgment of no cause of action.

On June 18, 1990, while Thomas Najar and Kathy Wagner were still married, Thomas Najar entered into an agreement (Agreement) with plaintiffs Leonard Kyle and Frederick Boncher. The Agreement provided that (1) Najar would pay money to Kyle and Boncher at specified times, (2) he and his wife, Wagner, would execute a promissory note, and (3) payment would be secured by a mortgage on Wagner's and Najar's home. The Agreement further provided that in the event Najar purchased a new home, the security interest would be transferred and a second mortgage would be executed. Unbeknownst to Wagner, Najar forged Wagner's signature on the promissory note for \$112,500 and on a mortgage of their home, which was used to secure the note. In July 1990, the parties sold their home and purchased a new one. Najar executed a second promissory note and mortgage on the parties' new home and once again forged Wagner's signature. The latter mortgage was dated August 1, 1990 and was recorded with the Kent County Register of Deeds on August 7, 1990. On June 28, 1991, Najar and Wagner divorced. When they subsequently failed to make payments as required by the promissory note, the holders of the note and mortgage brought this action for foreclosure against Najar and Wagner. Wagner brought a cross-claim against Najar for slander of title.¹ The parties agreed that the matter would be decided by the court based on the briefs of the parties.

On appeal, Najar presents three bases for reversing the judgment. We are persuaded by his argument that Wagner's claim was barred by a release contained in the judgment of divorce.

In the consent judgment of divorce, Wagner agreed:

that upon recovery of any funds from litigation relevant to Defendant's business interest that Plaintiff shall receive one-half (½) of any recovery relating to the loss from interference with business relationships, extortion, breach of contract or other claims arising between January, 1989 and October, 1990. Plaintiff hereby waives and forfeits any other claims she may have against Defendant arising during this time period.

Wagner concedes that the forgeries that are the bases of her claim occurred between January, 1989 and October, 1990. She also concedes that she was aware of the forgeries at the time she approved the judgment of divorce. However, she contends that her claim did not arise until she became aware of the forgeries, which was no earlier than December, 1990. We disagree.

The date a claim arises is when the action can be alleged in a complaint. *Lumley v Bd of Regents*, 215 Mich App 125, 131; 544 NW2d 692 (1996). The elements of slander of title are falsity of statement and malice. *Bonner v Chicago Title Ins*, 194 Mich App 462, 470-471; 487 NW2d 807 (1992). Although in certain instances discovery of a cause of action is pertinent to determining when the statute of limitations begins to run, discovery is not itself an element of the claim. See *Lumley, supra* at 130-131. The elements of the present claim could have been alleged after Najar forged Wagner's signatures and recorded the mortgages. Thus, even if Wagner did not know about the forgeries until December, 1990, the claim was one "arising" between January, 1989 and October, 1990. Accordingly, the claim was barred by the release that was part of the judgment of divorce. The trial court erred in entering judgment for Wagner.

Because we find that this action was barred by the release, we need not address Najar's other arguments.

Reversed and remanded for entry of a judgment of no cause of action. We do not retain jurisdiction.

/s/ Henry W. Saad

/s/ Janet T. Neff

/s/ Maureen Pulte Reilly

¹ Wagner incorrectly contends that her cross-claim included an allegation that Najar had committed an intentional tort. In paragraph 9 of her cross-claim, Wagner alleged that Najar had shown "a specific intent to injure and harm" her by forging her signature. However, this was not a separate allegation of an intentional tort because the elements of a tort were not stated in a separate count as is required by MCR 2.113(E)(3).