

STATE OF MICHIGAN
COURT OF APPEALS

ELIE C. AWAD and CHRISTINA D. AWAD,

Plaintiffs-Appellees/Cross-Appellants,

v

PAULINE DUKE and DUKE'S AUTO & TRUCK
EQUIPMENT, INC.,

Defendants-Appellants/Cross-Appellees/
Third-Party Plaintiffs/Appellants,

v

HOME TITLE AND ESCROW SERVICES, INC.,
LAWYERS TITLE INSURANCE CORPORATION
and D.G. CASTELLI, INC. d/b/a CENTURY 21
CASTELLI,

Third-Party Defendants/Appellees.

Before: Young, Jr., P.J., and Kelly and Doctoroff, JJ.

PER CURIAM.

In this property dispute, defendants appeal as of right the trial court's order granting summary disposition to plaintiffs on their breach of contract and warranty of title claim and its order granting summary disposition to third-party defendants Lawyers Title Insurance Corp. and Home Title and Escrow Services, Inc. (Lawyers Title). Defendants also appeal the trial court's order granting a preliminary injunction to plaintiffs. Plaintiffs cross-appeal the trial court's order granting summary disposition to defendants on plaintiffs' fraud and misrepresentation, specific performance, and constructive trust claims. We affirm.

Defendants first argue that the trial court erred in granting summary disposition to plaintiffs on their breach of contract and warranty of title claim. We disagree. Under MCL 565.151; MSA

26.571, a grantor of title by warranty deed is deemed to covenant that the property is free from all encumbrances, and that he will warrant and defend the title against all lawful claims. The grantee has a right to insist that the grantor covenant against known and unknown encumbrances. *Lavey v Graessle*, 245 Mich 681, 684; 224 NW2d 436 (1929). An encumbrance is anything which constitutes a burden upon the title. *Id.* at 683. The covenant is broken by the existence of an encumbrance on the premises, if at all, when the conveyance is made. *Id.* at 684.

In this case, defendants admitted in their answer that title was conveyed to plaintiffs by warranty deed, and are therefore deemed by statute to have guaranteed that the property would be free from all encumbrances. MCL 565.151; MSA 26.571. Defendants also admitted that the property was subject to federal tax liens, and there is no dispute that those liens constitute an encumbrance. See *White v Gibson*, 146 Mich 547, 549; 109 NW 1049 (1906). Contrary to defendants' assertion, plaintiffs were not required to wait until the Internal Revenue Service (IRS) sought to enforce the tax liens on the property: a claim for breach of the warranty against encumbrances may be brought without any litigation having been initiated between the grantee and the encroaching party. *Wolfenden v Burke*, 69 Mich App 394, 401; 245 NW2d 61 (1976). Moreover, the fact that defendants may have had no knowledge of the tax liens does not state a valid defense. *Lavey, supra* at 684. Finally, defendants have cited no authority to support their assertion that obtaining a commitment for title insurance fulfills their obligations under the warranty deed. This Court will not search for authority to sustain a party's position. *Patterson v Allegan Co Sheriff*, 199 Mich App 638, 640; 502 NW2d 368 (1993). Defendants having failed to state a valid defense to plaintiffs' claim for breach of contract and warranty of title, plaintiffs were entitled to summary disposition under MCR 2.116(C)(9). *Nicita v Detroit (After Remand)*, 216 Mich App 746, 750; 550 NW2d 269 (1996).

Defendants next contend that the trial court erred in dismissing defendants' third-party claims for breach of contract, negligence, and indemnification brought against Lawyers Title. We disagree.

First, defendants' contract claim fails because defendants have identified no contractual obligation that Lawyers Title owed to defendants other than to issue a policy of title insurance with plaintiffs as the named insureds. Defendants certainly are not the named beneficiaries of the policy in question and they have provided no evidence that Lawyers Title made any promises to defendants that title would be marketable.¹ Summary disposition was therefore appropriate under MCR 2.116(C)(10). *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). Second, defendants' negligence claim fails because defendants have not established the existence of any common law duty owed by Lawyers Title to defendants, as the sellers of the real property at issue, to conduct a title search. That claim was properly dismissed under MCR 2.116(C)(8). See *Dykema v Gus Macker Enterprises, Inc*, 196 Mich App 6, 9; 492 NW2d 472 (1992). Finally, because defendants have not provided any authority to support their claim for indemnification, we deem that claim to have been effectively abandoned. *Patterson, supra*.

Defendants argue that the trial court erred in granting a preliminary injunction in favor of plaintiffs. However, this issue is moot because the trial court subsequently dissolved the injunction. See *Mich Nat'l Bank v St Paul Ins Co*, 223 Mich App 19, 21; 566 NW2d 7 (1997) ("An issue is moot if

an event has occurred that renders it impossible for the court, if it should decide in favor of the party, to grant relief.”)

In their cross-appeal, plaintiffs argue that the trial court erred in dismissing their fraud and misrepresentation claim, and denying plaintiffs’ request for specific performance and the imposition of a constructive trust. We affirm the trial court’s dismissal of plaintiffs’ fraud and misrepresentation claim because plaintiffs have alleged no wrongdoing other than the breach of contract. *Huron Tool & Engineering Co v Precision Consulting Services, Inc*, 209 Mich App 365, 375; 532 NW2d 541 (1995). Finally, we affirm the trial court’s decision to deny plaintiffs’ request for equitable relief in the form of specific performance, i.e., removal of the tax liens, and the imposition of a constructive trust because plaintiffs have failed to establish on this record that either of those remedies is warranted.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Michael J. Kelly

/s/ Martin M. Doctoroff

¹ Indeed, it is generally recognized that a title insurance policy is merely “a statement by a title insurance company that, in exchange for a premium paid, it is willing to take the risk that title is as stated in the title insurance policy.” 1 Cameron, Michigan Real Property Law (2d ed), § 12.14, p 425. Hence, title insurance merely provides protection to the named beneficiary, the purchaser, in the event that the title covered by the policy is encumbered. Defendants cite no authority for their claim that title insurance operates as a guarantee of marketable title to *any* party to the sale of real estate.