STATE OF MICHIGAN

COURT OF APPEALS

DARIO TOMEI,

Plaintiff-Appellant,

v

EMERALD POINTE CONSTRUCTION COMPANY, LAKE VIEW ESTATES OF BOYNE, HARRY MANOOGIAN, and IRVING STRICKSTEIN,

Defendants-Appellees,

and

SHELDON KORN, DAVID SWETICH, MARY SWETICH, and FIRST OF AMERICA BANK,

Defendants.

UNPUBLISHED
February 27, 2001

No. 213869
Wayne Circuit Court
LC No. 96-625683-CK

Before: Cavanagh, P.J., and Saad and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right from an order issued in this mortgage foreclosure action. We affirm.

This case arose from a series of real estate and loan transactions. In 1994, plaintiff loaned defendant Emerald Pointe Construction $450,000. Security for that loan was, among other things not at issue here, a second mortgagee status on eight condominiums at Lake View Estates of Boyne in Charlevoix (the first mortgagee status was held by First of America Bank).

The promissory note on plaintiff's loan indicated that any three condominiums at Lake View Estates could be released by Harry Manoogian, the president of Emerald Pointe, without payment to plaintiff as long as the money was applied to the outstanding senior mortgage held by First of America. In January 1996, in contravention of this agreement, Manoogian released by quitclaim deeds two condominiums to defendant Irving Strickstein. The release was in satisfaction of an outstanding debt to Strickstein. Strickstein recorded both deeds in January 1996.

In April 1996, because of nonpayment, plaintiff initiated the instant judicial foreclosure proceedings on the condominiums, including the two then owned by Strickstein.

In December 1996, Strickstein purchased and recorded the paper on First of America's first mortgage on the remaining condominium properties at Lake View Estates, thereby achieving first mortgagee status ahead of plaintiff. In January 1997, Strickstein conveyed by warranty deed to good-faith purchasers one of the condominiums that Manoogian had quitclaimed to him. In March 1997, Strickstein foreclosed on the remaining Lake View property by advertisement.

The trial court held an evidentiary hearing in March 1998 and concluded that Manoogian committed a material breach of the contractual agreement with plaintiff by conveying the two condominiums to Strickstein without applying the proceeds to the First of America mortgage. The court also concluded that Strickstein did not act improperly and therefore could not be held liable for Manoogian's breach. The court granted a judgment against Manoogian and ordered Manoogian to pay all costs incurred by plaintiff in redeeming the remaining five[1] condominiums from Strickstein.

Plaintiff argues that the trial court's remedy improperly allowed Strickstein to retain the two condominiums that Manoogian improperly conveyed to Strickstein. Plaintiff argues that pursuant to his original promissory note with Emerald Pointe, the two condominiums should have been used as a complete satisfaction of the first mortgage and that if this had been done, no redemption of the remaining lots by plaintiff would have been necessary. Accordingly, plaintiff seeks to hold Strickstein accountable for the redemption costs plaintiff incurred.

This Court reviews equitable relief de novo and will set aside a trial court's findings only if they are clearly erroneous. *Attorney General v John A Biewer Co, Inc*, 140 Mich App 1, 12-13, 363 NW2d 712 (1985).

We agree with the trial court that Manoogian's conveyances to Strickstein were a breach of the promissory note and that the remedy must hold only the breaching party, Manoogian, accountable. Plaintiff offered no evidence that Strickstein, as opposed to Manoogian, committed unlawful or culpable conduct that would justify forcing him to pay for plaintiff's redemption costs. Strickstein did not breach any contractual obligations to plaintiff. In fact, he *had* no contractual obligations to plaintiff.

Moreover, when obtaining the two condominiums in question, Strickstein received a discharge of plaintiff's mortgage on them from plaintiff's escrow agent. The trial court found that the escrow agent acted properly in discharging the mortgage, and plaintiff does not challenge this finding on appeal. Accordingly, because Strickstein received a lawful discharge of the mortgage, we cannot say that the trial court clearly erred in finding that Strickstein acted properly in his treatment of the two condominiums.[2] See *id.*

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[1] One of the Lake View condominiums was sold in September 1995 and is not a subject of this appeal.

[2] Although plaintiff implies, at pages 9-10 of his appellate brief, that Strickstein knew about the (continued…)

"If the trial court's findings of fact are not clearly erroneous, then we review the record de novo to determine whether the equitable relief granted was appropriate in light of those facts." *Id*. at 13. Because Strickstein did not act improperly, and because the breaching party was Manoogian, the trial court's equitable relief – ordering Manoogian to cover plaintiff's redemption costs – was indeed appropriate.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Patrick M. Meter

(…continued)

terms of the promissory note between plaintiff and Emerald Pointe (i.e., that Manoogian could sell three condominiums only if the proceeds were used to satisfy the First of America mortgage), he points to no record support for this implication.