

STATE OF MICHIGAN
COURT OF APPEALS

MARELYN P. PAULEN,

Plaintiff-Appellant,

v

JOSEPH N. PETERS and BETTY J. PETERS,

Defendants-Appellees.

UNPUBLISHED

November 16, 2001

No. 222659

Alcona Circuit Court

LC No. 98-010073-CH

Before: O'Connell, P.J., and White and Smolenski, JJ.

PER CURIAM.

In this quiet title action, plaintiff appeals as of right from the trial court's order denying her motion for summary disposition and quieting title in defendants.¹ Although defendants' claim to the subject property rested solely on a forged deed, the trial court relied on agency principles to award title to defendants. We reverse and remand.

Plaintiff first alleges that the trial court erred as a matter of law by determining that a forged deed transferred title from plaintiff to defendants. We agree. Quiet title actions are equitable in nature, and we therefore review the trial court's holdings de novo. *Gorte v Dep't of Transportation*, 202 Mich App 161, 165; 507 NW2d 797 (1993). In quiet title actions, the plaintiff bears the 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). Once the plaintiff presents a prima facie case, the defendants then bear the burden of proving superior title. *Id.*

In the present case, it is undisputed that plaintiff held title to the subject property before the transaction in question. Therefore, plaintiff met her burden of presenting a prima facie case of title. It is also undisputed that plaintiff's real estate agent forged plaintiff's name on the warranty deed purporting to transfer the disputed property to defendants. Defendants' arguments center on their status as innocent purchasers, lacking knowledge of the forgery committed by

¹ The trial court's order purported to grant *defendants'* motion for summary disposition. Our review of the record reveals that defendants simply answered plaintiff's motion for summary disposition, and did not file a motion of their own. Therefore, we treat the trial court's order as a denial of plaintiff's motion for summary disposition.

plaintiff's real estate agent. However, it is well-settled law that a person cannot become a bona fide purchaser for value if the deed by which the purchaser takes is a forgery. *Austin v Dean*, 40 Mich 386, 388 (1879); *Lee v Kellogg*, 108 Mich 535, 536; 66 NW 380 (1896); *Graham v Sinderman*, 238 Mich 210, 215; 213 NW 200 (1927); *Horvath v National Mortgage Co*, 238 Mich 354, 360; 213 NW 202 (1927); *Vanderwall v Midkiff*, 166 Mich App 668, 685; 421 NW2d 263 (1988). We conclude, as a matter of law, that defendant's claim of title to the subject property cannot be superior to plaintiff's claim of title because defendant's claim is based on a forged instrument. "Forged papers cannot be made the basis of a recovery, *either at law or in equity*, against the supposed maker." *Lee, supra* at 536 (emphasis added).

Defendants argue that the trial court did not rely on the forged deed when it quieted title in defendants, but relied on agency law principles. We conclude that the trial court committed error requiring reversal when it relied on agency principles to award defendants title to the subject property.

Defendants first argue that they are entitled to a valid deed because plaintiff accepted funds from the fraudulent sale. If a principal accepts the benefits of unauthorized acts of the agent, *with knowledge of the material facts*, then the principal ratifies the agent's unauthorized acts. *Bruno v Zwirkoski*, 124 Mich App 664, 668; 335 NW2d 120 (1983) (emphasis added). In the present case, the purchase agreement validly executed by the parties provided for a down payment of \$5,000, with the balance of \$19,000 payable in monthly installments. Without plaintiff's knowledge, defendants requested to pay the entire purchase price at the time of closing. Plaintiff's real estate agent agreed, forged plaintiff's name on the deed, accepted the \$24,000 payment, and converted those funds to her own use. The agent then forged defendants' names on a land contract, forwarded plaintiff \$5,000 in the guise of a down payment, and paid several "monthly installments" to plaintiff. Under these facts, plaintiff had no reason to suspect the true state of affairs. There is simply no evidence in the record that plaintiff had knowledge of the agent's actions when she accepted the payments. Once plaintiff discovered the forgery and fraud, she attempted to tender to defendants all the money that she had received. Because plaintiff lacked knowledge of the material facts, the trial court erroneously concluded that plaintiff's initial acceptance of funds ratified the real estate agent's unauthorized acts.

Defendants also rely on *Andreae v Wolgin*, 257 Mich 572, 575; 241 NW 876 (1932), for the proposition that, "[w]here one of two innocent parties must sustain loss from the fraud of a third, the loss ordinarily falls on the one whose act has enabled such fraud to be committed." However, this rule is not absolute, and "operates by estoppel only to protect one who has exercised ordinary care and prudence." *Id.* at 576. Further, a party may take advantage of this doctrine only when the written instruments conveyed information that would induce an ordinarily prudent person to form an honest conclusion that the party committing the fraud had the authority to act. *Id.* In the present case, the purchase agreement was the sole document between the parties that was validly executed. That document did not purport to authorize plaintiff's real estate agent to alter the terms of the sale, to conduct a closing in plaintiff's absence, or to collect the proceeds on plaintiff's behalf. Accordingly, we conclude that the purchase agreement would not have induced an ordinarily prudent person to form an honest conclusion that plaintiff's real estate agent had the authority to bind plaintiff as she purported to do.

We reverse the trial court's decision quieting title in favor of defendant and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Michael R. Smolenski