

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UNPUBLISHED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.

WHITE, J. (*concurring in part and dissenting in part*).

While I agree with the reversal, I do not agree with the majority's characterization of the proceedings below or of the circuit court's ruling. Additionally, to the extent the majority appears to decide that there are no genuine issues with regard to the agent's apparent authority, and that plaintiff is herself entitled to prevail, I dissent.

While plaintiff sought to quiet title on the basis that the deed conveying the property to defendants was forged, defendants stressed that plaintiff agreed to sell the property to them for a certain price and they paid that price to plaintiff's agent. The circuit court recognized that the parties had presented issues beyond whether a forged deed transfers title. Also implicated was whether plaintiff was entitled to quiet title in the face of defendant's payment of the full contract price. The court did not determine that the forged deed transferred title, and defendants' claim was not based only on the forged deed, but also on their claimed performance of the contract.

I also do not agree that the court erred when it relied on agency principles, although I do agree that defendant was not entitled to summary disposition. I conclude, however, that plaintiff is not entitled to summary disposition on the issue either. Although the parties both sought summary disposition, there were questions of fact remaining. It is for the trier of fact to decide whether defendants exercised ordinary care and prudence under the circumstances, and whether an ordinarily prudent person would have reached an honest conclusion that the agent had authority to accept full payment.

On the record before us, there was no deposition testimony of plaintiff or her daughter offered in support of the motion for summary disposition. Nor was there an affidavit. The record is insufficient regarding how the closing came to be conducted in the manner it was, and the nature of plaintiff's arrangement with the agent regarding closing. While the majority observes that the purchase agreement did not purport to authorize the real estate agent to conduct

a closing, alter the terms of sale, or collect the proceeds, it was not established that she did not have that authority either. The circumstances are consistent with the agent having the authority to close. The land contract executed by plaintiff's daughter, under a power of attorney for plaintiff, permitted early and accelerated payments. And, letters from the agent to plaintiff's daughter state that the buyers are contemplating making a substantial payment, and indicate that the arrangement between plaintiff and the agent was for the agent to accept payment and forward it to plaintiff.¹

I would not decide the merits of this case as a matter of law, as the majority appears to do.

/s/ Helene N. White

¹ These two letters and the land contract were made exhibits to Joseph Peters' deposition, which was filed with the circuit court, as was Betty Peters' deposition.