

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN PETERSON,

Plaintiff-Counter-Defendant-
Appellee,

v

PAUL J. PERRY and KATHLEEN L. PERRY,

Defendants-Cross-Defendants,

and

MARQUETTE CATHOLIC CREDIT UNION,

Defendant-Counter-Plaintiff-
Cross-Plaintiff-Appellant.

.

UNPUBLISHED

March 1, 2002

No. 231498

Marquette Circuit Court

LC No. 99-036373-CH

Before: Bandstra, P.J., and Murphy and Murray, JJ.

MEMORANDUM.

Defendant appeals as of right the judgment entered for plaintiff in this quiet title action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff purchased real property from Paul and Kathleen Perry by a land contract dated May 6, 1991. While plaintiff was residing in the home, the Perrys obtained a mortgage on the premises from defendant credit union. The mortgage was recorded on December 23, 1992. At the time, neither the land contract nor a memorandum was recorded.

A default judgment was entered against the Perrys, and the remaining claims were resolved on cross-motions for summary disposition. The trial court found that defendant should have made further inquiry about plaintiff's status, and was not a good faith purchaser.

Recorded liens, rights, and interests in property take priority over subsequent owners and encumbrances. MCL 565.25. Where an individual fails to record an interest, that interest is void against any subsequent holder who purchased the interest in good faith for valuable consideration. MCL 565.29. A person who has notice of a possible defect in a vendor's title and fails to make further inquiry into the possible rights of a third-party is not a good-faith purchaser,

and is chargeable with notice of what an inquiry would have disclosed. *Kastle v Clemons*, 330 Mich 28, 31; 46 NW2d 450 (1951); *Royce v Duthler*, 209 Mich App 682, 690; 531 NW2d 817 (1995). Notice need only be of the possibility of the rights of another, not positive knowledge of those rights. *Id.* Notice must be of such facts that would lead any honest person, using ordinary caution, to make further inquiries into the possible rights of another in the property. *Id.*

The trial court relied on three facts to charge defendant with notice: plaintiff lived on the property, the tax bills were in his name, and he was a named insured in the insurance policy given to defendant. The trial court did not err in finding that an honest person of ordinary caution would have made further inquiries based on these facts. Plaintiff's occupancy would be explained if he were a tenant, but there was no reason for the tax bills to be in his name or for him to be the named insured of the homeowner's policy, while the ostensible owners were only loss payees. Under these circumstances, defendant was required to make further inquiries in order to be found a good-faith purchaser with priority over plaintiff.

Affirmed.

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Christopher M. Murray