

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GUY ROBINSON and MARIAN NOWOSATKO,

Plaintiffs,

and

MIKE NOWOSATKO,

Plaintiff-Appellant,

v

BUSINESS FUNDING CORPORATION,

Defendant-Appellee.

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UNPUBLISHED

December 20, 2002

No. 225815

Oakland Circuit Court

LC No. 99-013241-CZ

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GUY ROBINSON and MIKE NOWOSATKO,

Plaintiffs,

and

MARIAN NOWOSATKO,

Plaintiff-Appellant,

v

BUSINESS FUNDING CORPORATION,

Defendant-Appellee.

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No. 226647

Oakland Circuit Court

LC No. 99-013241-CZ

Before: O'Connell, P.J., and White and B. B. MacKenzie\*, JJ.

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

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

I respectfully dissent in Docket No. 226647. I conclude that a genuine issue of fact remained on the question whether plaintiff Marian Nowosatko's signature on the mortgage was forged. Further, although Marian Nowosatko knew of the forgery as of June 24, 1996, when she signed an affidavit so stating, there is no evidence that she was aware of the mortgage (or her forged signature) earlier. Marian Nowosatko was not a party to either of the settlement agreements for redemption of fraud that Mike Nowosatko and Guy Robinson entered into with defendant, in 1992, and in 1993. I also note that Mike Nowosatko testified at his August 26, 1999 deposition that defendant had been notified by letter about two years earlier, i.e., around August 1997, that Marian Nowosatko's signature on the mortgage form was forged. Thus, the facts defendant advanced below in support of the application of the doctrine of laches, i.e., that it had not learned of the forgery until plaintiffs filed their motion for summary disposition and submitted Marian Nowosatko's affidavit, were contested.<sup>1</sup>

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<sup>1</sup> Plaintiffs' complaint, filed on March 12, 1999, alleged that Marian Nowosatko's signature on the mortgage form was a forgery, and that:

24. The Plaintiff, Marian Nowosatko, is not and never has been an officer, director, stockholder, employee, agent or representative of A.D.I. or Wellington.

25. The Plaintiff, Marian Nowosatko, is the wife of the Plaintiff, Michael Nowosatko, and she is the sole owner of certain real property located in the City of Troy . . . . 119 Nottingham.

26. Upon information and belief, the Defendant, Business Funding Corporation, has filed a lien, in the form of a mortgage, against the above captioned property, which, as indicated, is titled in the sole name of the Plaintiff, Marian Nowosatko[,] a copy of which lien is attached hereto . . .

27. Upon information and belief, the mortgage purports to secure the obligations of A.D.I. and Wellington as set forth in the Agreements (Exhibits A & B) between A.D.I. and Wellington and the Defendant, Business Funding Corporation.

\* \* \*

29. The Plaintiff, Marian Nowosatko, did not sign the mortgage, did not authorize to sign the mortgage on her behalf and the signature on the mortgage which purports to be the signature of the Plaintiff, Marian Nowosatko, is not, in fact, the signature of the Plaintiff, Marian Nowosatko, and, therefore, the mortgage is null and void and of no force or effect.

30. The Plaintiff did not receive any consideration for the mortgage and, therefore, the mortgage is null and void and of no force or effect.

(continued...)

It is undisputed that Marian Nowosatko was at all times the sole owner of the residence that is the subject of the mortgage. The mortgage form, dated August 13, 1991, bears signatures purporting to be Marian Nowosatko's and Mike Nowosatko's.<sup>2</sup> In support of their motion for summary disposition, plaintiffs submitted Marian Nowosatko's affidavit attesting that the signature on the mortgage purporting to be hers was a forgery,<sup>3</sup> and Mike Nowosatko's deposition testimony<sup>4</sup> that he forged his wife's signature on the mortgage. Mike Nowosatko's answers to defendant's requests for admission,<sup>5</sup> contained in the lower court record, are in accord.

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(...continued)

31. The mortgage has become a cloud and slander on the title to the property of the Plaintiff, Marian Nowosatko, and the Plaintiff, Marian Nowosatko, is fearful that if the cloud and slander upon her title to the property is not removed . . . the Defendant . . . will attempt to foreclose upon the mortgage or assign, encumber, sell or otherwise dispose of the property of the Plaintiff, Marian Nowosatko, causing her irrefutable harm and injury.

<sup>2</sup> The mortgage form states that it was drafted by Harold Nimchonok, an employee of defendant, bears witness signatures of Gary Rotenberg and Sandra Phillips, and the signature of Kathleen M. Sadoway, as notary. Mike Nowosatko's answers to requests for admission denied that Sadoway was either present, witnessed or notarized the execution of the mortgage on August 13, 1991. Mike Nowosatko testified at deposition that Gary Rotenberg, accountant for Advertising Dimensions and Fortune Graphics, had him (Mike Nowosatko) sign for Marian Nowosatko, and that there were no witnesses. Mike Nowosatko testified that he did not who Kathleen Sadoway is.

<sup>3</sup> Marian Nowosatko's affidavit, dated June 24, 1996, stated:

1. I am married to Michael Nowsoatko [sic].
2. I am the sole owner of the home located at 119 Nottingham, Troy, Michigan.
3. I have not granted a mortgage to Business Funding Corporation on my home.
4. The signature on the attached mortgage to Business Funding dated August 13, 1991, is not my signature and I have no knowledge as to who signed my name to the mortgage.
5. I am competent to testify and if called upon to testify, I will testify as to the truth and accuracy of the facts contained in this Affidavit.

<sup>4</sup> Only certain pages of Mike Nowosatko's deposition transcript are before us.

<sup>5</sup> Plaintiff Mike Nowosatko answered defendant's first request for admission to him as follows:

1. Please admit or deny that you executed the Mortgage Form dated August 13, 1991 from Michael Nowosatko and Marian Nowosatko to Business Funding Corporation, (Copy attached), as a Mortgagor.

ANSWER: Admit.

(continued...)

Under Michigan law a forged signature on a mortgage renders it void and unenforceable. *McGinn v Tobey*, 62 Mich 252; 28 NW 818 (1886); see also 17 Mich Civil Jur, Mortgages, § 27, p 573 (“A mortgage is a nullity if the signature of the mortgagor is a forgery, and the lien will be voided since it is predicated on a forged conveyance,” citing *McGinn, supra*,) and *id.*, § 101, p 643 (“A forged mortgage is no mortgage and a nullity,” citing *LaPrad v Sherwood*, 79 Mich 520; 44 NW 943 (1890), *Waterbury v Andrews*, 67 Mich 281; 34 NW 575 (1887), and *Camp v Carpenter*, 52 Mich 375; 18 NW 113 [1884].)

A false statement regarding title to real estate constitutes fraud. See *Zaino v North Woodward Const Co*, 355 Mich 425, 429-430; 95 NW2d 33 (1959). In *Horvath v National Mortgage Co*, 238 Mich 354, 360; 213 NW 202 (1927), the Supreme Court determined that a signature on a deed procured by fraud was “in law a forgery,” and that “those who subsequently innocently acquired interests under the forged instrument are in no better position as to title than if they had purchased with notice.” The *Horvath* Court further noted:

“There can be no such thing as a *bona fide* holder under a forgery, whose good faith gives him any rights against the party whose name has been forged or his heirs.” *Austin v. Dean*, 40 Mich 386 [1879].

The *Horvath* rule has been applied to mortgages, as well as deeds. See e.g., *Matthews v Aluminum Acceptance Corp*, 1 Mich App 570, 576; 137 NW2d 280 (1965).

In *VanderWall v Midkiff*, 166 Mich App 668; 421 NW2d 263 (1988), Gelderloos, who subsequently died intestate, gave power of attorney to one of his stepdaughters, Rowbotham. Rowbotham signed a deed in Gelderloos’ name to the family home and cottage, without indicating she was doing so pursuant to a power of attorney, and transferred it to one of her siblings, Midkiff. Midkiff sold the home to the Rays. Gelderloos’ nephew, VanderWall, brought suit. The jury concluded that Rowbotham had not acted under Gelderloos’ direction, and the trial court ordered transfer of title to the home to the Rays. Regarding title to the home, this Court concluded:

The Rays . . . claim that they are insulated from plaintiff’s claim because they are bona fide purchasers of the home. There can be no such thing as a bona fide holder under a forged deed, whose good faith confers any rights against the party whose name has been forged, or those claiming under him. Where a deed is forged, those innocently acquiring interests under the forged deed are in no better

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(...continued)

2. Please admit or deny that Kathleen M. Sadoway was present on August 13, 1991, and witnessed and notarized execution of the attached Mortgage.

ANSWER: Deny.

3. Please admit or deny that the signature set forth on the attached Mortgage dated August 13, 1991 is that of your spouse, Marian Nowosatko.

ANSWER: Deny.

position as to title than if they had purchased with notice. It cannot be disputed that the signature of Gelderloos on the quitclaim deed to Midkiff was forged. Rowbotham admitted that it was she, and not Gelderloos, who signed his name to the deed. Although Rowbotham claimed that she acted at the direction of Gelderloos, the jury found otherwise. As a forged document, the deed did not operate to convey title in the property to Midkiff. This, in turn, precluded the Rays from taking good title from Midkiff, and the fact that they took without notice does not insulate them from plaintiff's claim. [*VanderWall, supra* at 685.]

In *Geel v Valiquett*, 292 Mich 1, 18; 289 NW 306 (1939), the Supreme Court held that where "there was fraud in the transactions relating to the deed and land contract, . . . the same should be declared void as against public policy." The *Geel* Court declined to apply the doctrine of laches to a contract that was void as against public policy:

It is urged by defendants that plaintiffs are guilty of laches and rely upon *Merrill v. Wilson*, 66 Mich. 232 [; 33 NW 716 (1887)], where we said:

"A person \* \* \* who has been defrauded, must act promptly; and, if he would repudiate the contract, he must do nothing in affirmance of it after ascertaining the facts."

In the case at bar, we hold that the deed and land contract are void as against public policy. In such cases the doctrine of laches has no application.

In 6 R.C.L. p. 819, it is said:

"However, the doctrine of estoppel by conduct or by laches has no application to a contract or instrument which is void because it violates an express mandate of the law or the dictates of public policy. Such a contract has no existence whatever. It has no legal entity for any purpose, and neither action nor inaction of a party to it can validate it; and no conduct of a party to it can be invoked as an estoppel against asserting its invalidity. The authorities are uniformly agreed on this principle. [*Geel, supra* 292 Mich at 18.]

I would thus remand for determination whether Marian Nowosatko's signature on the mortgage form was a forgery. If the fact-finder were to conclude that it was a forgery, the doctrine of laches would not apply under the cases discussed above.

/s/ Helene N. White