

STATE OF MICHIGAN  
COURT OF APPEALS

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EQUITY FUNDING, INC.,

Plaintiff-Appellant,

V

INVESTMENT VENTURES, INC.,

Defendant-Appellee,

and

MAJOR TOOLEY'S DEVELOPMENT, INC.,

Defendant.

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UNPUBLISHED

August 5, 2004

No. 244540

Wayne Circuit Court

LC No. 02-219330-CH

Before: Talbot, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right an order quieting title in defendant, pursuant to an order granting defendant's motion for summary disposition in this real property action involving the priority of mortgages. Because plaintiff's mortgage is not a purchase money mortgage, it does not have priority over defendant's land contract mortgage because defendant's land contract mortgage was recorded first. The trial court correctly granted summary disposition to, and quieted title in favor of, defendant. We affirm.

A trial court's decision regarding a motion for summary disposition<sup>1</sup> is reviewed de novo. *Quality Products & Concept Co v Nagel Productions, Inc*, 469 Mich 362, 369; 666 NW2d 251 (2003). Summary disposition is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *West v General Motors Corp*, 469

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<sup>1</sup> Although defendant moved for summary disposition pursuant to MCR 2.116(C)(8), the trial court relied on documentary evidence that was not part of the parties' pleadings. Where documentary evidence is relied on and submitted by the parties, this Court treats the motion as having been granted pursuant to MCR 2.116(C)(10), and examines the pleadings and the documentary evidence. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

Mich 177, 183; 665 NW2d 468 (2003). A motion for summary disposition based upon a lack of a material factual dispute tests the factual support for a claim. *DeSanchez v Dep't of Mental Health*, 467 Mich 231, 235; 651 NW2d 59 (2002). When testing this support, the pleadings, affidavits, depositions, admissions and other admissible evidence must be viewed in the light most favorable to the nonmoving party. *Quality Products & Concept Co, supra*, 469 Mich 369.

Under Michigan law, a purchase money mortgage is “[a] mortgage or security device taken back to secure the performance of an obligation incurred in the purchase of the property.” Black’s Law Dictionary (6<sup>th</sup> ed); See also Restatement Property, 3d, Mortgages, § 7.2, p 458. Our Supreme Court recently held that “a mortgage, the proceeds of which are used to pay off a land contract debt, is not a purchase money mortgage.” *Graves v American Acceptance Mortgage Corp*, 469 Mich 608, 618; 677 NW2d 829 (2004). In a brief to this Court, plaintiff conceded that our Supreme Court’s decision in *Graves, supra*, establishes that plaintiff does not hold a purchase money mortgage because the proceeds of plaintiff’s loan secured by the mortgage were used to pay off a land contract debt.

Similarly, defendant’s mortgage is not a purchase money mortgage. The trial court erred in finding that defendant’s interest was a purchase money mortgage. While making payments on a land contract, the vendee takes equitable title in the property, but the vendor holds legal title in trust until the contract is fully performed. *Steward v Panek*, 251 Mich App 546, 555-556; 652 NW2d 232 (2002). Defendant’s mortgage secured an assignment of interest in a land contract only. Since defendant was still making payments on the land contract when it assigned its interest to Major Tooley’s and executed the quit-claim deed, defendant had only equitable title in the property and could convey nothing more. Because the mortgage proceeds were used to acquire equitable title in the property, not legal title, defendant’s mortgage is not a purchase money mortgage.

Defendant recorded the land contract mortgage and other documents relevant to the transfer of its interest in the land contract on October 10, 2000. Plaintiff executed its mortgage on January 10, 2002, and properly recorded the mortgage by January 31, 2002. Because neither of the parties is the holder of a purchase money mortgage, and defendant recorded its mortgage on the property first, under the race-notice recording statute, MCL 565.25, defendant’s previously recorded mortgage takes priority.

Affirmed.

/s/ Michael J. Talbot  
/s/ Janet T. Neff  
/s/ Pat M. Donofrio