STATE OF MICHIGAN

COURT OF APPEALS

ACORN INVESTMENT COMPANY,

Plaintiff-Appellee,

v

ANTONIO MCKELTON,

Defendant/Cross-Plaintiff-Appellant,

and

ARGENT MORTGAGE COMPANY, L.L.C.,

Defendant-Appellant,

and

ARMOUR NORRIS,

Defendant/Cross-Defendant,

and

ACE I TITLE AGENCY, L.L.C.,

Defendant.

UNPUBLISHED
June 27, 2006

No. 259662
Wayne Circuit Court
LC No. 03-326029-CH

Before: Cooper, P.J., and Neff and Borrello, JJ.

PER CURIAM.

Defendants, Antonio McKelton and Argent Mortgage Company, L.L.C. ("Argent"), appeal as of right from the trial court's order dismissing the cross-complaint against Armour Norris without prejudice. However, on appeal, McKelton and Argent contest the trial court's earlier order granting plaintiff's motion for summary disposition and argue that the trial court erred in quieting title in favor of plaintiff. For the reasons set forth in this opinion we affirm the orders of the trial court.

This case involves various transactions surrounding property located at 9303 Ward in Detroit ("the property"). In 1978, The Department of Housing and Urban Development (HUD) transferred the property to T&R management for $828. In 2001, T&R transferred the property to plaintiff Acorn. That same year, Acorn executed a land contract with defendant Norris in the amount of $15,000. Then, allegedly, 2002, two quitclaim deeds appear transferring the property from T&R to Acorn and from Acorn to Norris. Plaintiff later offered testimony that these deeds were forgeries. In 2001, McKelton, with no apparent interest in the property grants a mortgage on the property to Argent for $65,800. Some four days after this transaction, Norris is granted a mortgage from McKelton in the amount of $23,500. Thus the central issues presented in this case are (1) what interests in the property the parties possessed at the time of this action, and (2) whether plaintiffs sought recovery of the property through proper statutory authority.

McKelton and Argent first argue that the trial court erred in granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10) because plaintiff was required to pursue summary proceedings to recover possession of the property before instituting an action to quiet title because it was subject to a land contract between plaintiff and Armour Norris.

This Court reviews de novo a trial court's grant of a motion for summary disposition. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In reviewing a motion under MCR 2.116(C)(10), this Court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). If no genuine issue of material fact is established, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West*, *supra* at 183.

Furthermore, in *Fowler v Doan*, 261 Mich App 595, 598-599; 683 NW2d 682 (2004), this Court noted:

> [a]n action to quiet title is an equitable action, and the findings of the trial court are reviewed for clear error while its holdings are reviewed de novo. The applicability of a statute is a question of law that this Court reviews de novo. [Citations omitted.]

Statutory construction requires an examination of the plain language of the statute to determine the intent of the legislature. *Danse Corp v City of Madison Heights*, 466 Mich 175, 181-182; 644 NW2d 721 (2002). "[A] court must presume that every word has some meaning and, if possible, effect should be given to each provision." *Id*. at 182. "If the language of the statute is clear and unambiguous, no interpretation is necessary and the court must follow the clear wording of the statute." *American Alternative Insurance Co v Farmers Insurance Exchange*, 470 Mich 28, 30; 679 NW2d 306 (2004).

Under the Revised Judicature Act (RJA), MCL 600.2932, a plaintiff may bring an action to quiet title in the circuit court. MCL 600.2932(1) provides, in relevant part:

> *[a]ny person, whether he is in possession of the land in question or not*, who claims any right in, title to, equitable title to, interest in, or right to possession of

> land, *may bring an action in the circuit courts against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff, whether the defendant is in possession of the land or not.* [Emphasis added.]

Actions to quiet title are "equitable in nature." *Hall v Hanson*, 255 Mich App 271, 277; 664 NW2d 796 (2003), citing MCL 600.2932(5). An action to quiet title may be brought to lift a "cloud on title," which is defined as "an outstanding claim or encumbrance which, if valid, would affect or impair the title of the owner of a particular estate, and on its face has that effect, but can be shown by extrinsic proof to be invalid or inapplicable to the estate in question." *Hall*, *supra* at 277, quoting Black's Law Dictionary (6th ed) p 255. MCR 3.411 governs civil actions in circuit court to determine an interest in land.

Furthermore, the provisions governing summary proceedings for recovery of the possession of premises are found in the RJA, MCL 600.5701 *et seq*. *Entingh v Grooters*, 236 Mich App 458, 461; 600 NW2d 415 (1999). Pursuant to MCL 600.5704, a district court has jurisdiction over summary proceedings. "Summary proceedings" are defined as "a civil action to recover possession of premises and to obtain certain ancillary relief as provided by this chapter and by court rules adopted in connection therewith." MCL 600.5701. Although a district court's jurisdiction is normally limited to cases where the amount in controversy does not exceed $25,000, MCL 600.8301(1), district courts also have equitable jurisdiction over cases arising under Chapter 57 of the RJA, regardless of the amount in question, MCL 600.8302(3). *Bruwer v Oaks (On Remand)*, 218 Mich App 392, 395; 554 NW2d 345 (1996). MCR 4.202 governs summary proceedings and land contract forfeiture in district court. Additionally, MCL 600.5750 specifically provides that "[t]he remedy provided by summary proceedings is in addition to, and not exclusive of, other remedies, either legal, equitable or statutory." See *JAM Corp v AARO Disposal, Inc*, 461 Mich 161, 168-170; 600 NW2d 617 (1999).

In the present case, plaintiff did not bring the quiet title action to obtain possession of the property. Rather, plaintiff instituted the action to assert that it had superior title to Norris, McKelton and Argent. Indeed, in the complaint to quiet title and at the hearing on plaintiff's motion for summary disposition, plaintiff requested that the trial court quiet title in its favor because the subsequent conveyances of the property were either forged or improper under the land contract. The conveyances plaintiff disputed were as follows: (1) two quitclaim deeds executed on October 22, 2002, attempting to convey the property from T&R Management Company to plaintiff and from plaintiff to Norris; (2) a February 14, 2003, mortgage on the property granted by McKelton in favor of Argent; (3) a February 18, 2003, warranty deed conveying the property from Norris to McKelton; and (4) a February 18, 2003, mortgage on the property granted by McKelton in favor of Norris.

McKelton and Argent contend that McKelton, not Norris, was in possession of the property prior to plaintiff sending the forfeiture notice on May 6, 2003, and that McKelton was required to receive the notice of forfeiture so that he could exercise his statutory right of redemption under the land contract. Possession is irrelevant in this case because regardless of whether Norris or McKelton were in possession of the property, plaintiff could properly bring an action to quiet title in the circuit court under the unambiguous language of MCL 600.2932(1). If the subsequent conveyances of the property were invalid, they could all be considered a "cloud" that would affect or impair plaintiff's title to the property. *Hall*, *supra* at 277. Further, the

option of proceeding with a summary proceeding to obtain possession is "in addition to, and not exclusive of, other remedies, either legal, equitable, or statutory." *JAM Corp*, *supra* at 168, citing MCL 600.5750. Therefore, we conclude that plaintiff's claim to quiet title was properly considered by the trial court.

McKelton and Argent next argue that plaintiff failed to make a prima facie showing that it had title to the property.

"In an action to quiet title, the plaintiffs have the burden of proof and must make out 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). "If the plaintiffs make out a prima facie case, the defendants then have the burden of proving superior right or title in themselves." *Id.*

"[U]nder a land contract, although the vendor retains legal title until the contractual obligations have been fulfilled, the vendee is given equitable title." *Graves v American Acceptance Mtg Corp (On Rehearing)*, 469 Mich 608, 616; 677 NW2d 829 (2004). When the vendee signs the land contract, the vendee acquires "a present interest in the property that may be sold, devised, or encumbered." *Id*. Pursuant to the land contract mortgage act, MCL 565.356 *et seq*., "the equitable title conveyed to a vendee under a land contract evidences an interest in realty that may be encumbered, sold, or devised." *Graves*, *supra* at 617 n 6.

"Under the doctrine of equitable conversion, a buyer who performs under a land contract (i.e., pays in full) acquires equitable title, and the vendor holds the legal title to the property in trust." *Steward v Panek*, 251 Mich App 546, 555; 652 NW2d 232 (2002) (citations omitted). "Where the purchaser pays part of the purchase price and takes possession, the purchaser acquires an equitable title, and the vendor is a trustee of the legal title for the purchaser to the extent of the payment." *Id*. at 556. Further, MCL 565.361(1) provides, in relevant part:

> *[w]hen the vendee named in a land contract, or his or her heirs, successors, or assigns, has fully paid and performed the obligations under the contract that are a precondition to the sale and conveyance of the land, the vendor named in the contract shall make conveyance of the land to the vendee by a deed of conveyance* as specified in the land contract, or, if the form of the deed is not specified in the land contract, by an appropriate deed. Until the vendor named in the contract has ceased in law to be bound by the provisions of the contract, the obligation to convey the land remains a continuing executory obligation on the part of the vendor. [Emphasis added.]

Additionally, when the vendor named in the land contract ceases in law to be bound by the provisions of the contract, the vendee, or the vendee's successors or assigns, including any land contract mortgages or other parties claiming a lien in the vendee's interests in the land contract, shall execute a discharge of the contract. MCL 565.361(5).

Initially, we note that that the parties do not dispute that plaintiff was the fee simple owner of the property prior to the execution of the land sale contract on October 22, 2001. Furthermore, McKelton and Argent failed to present any evidence to contradict plaintiff's affidavits that the quitclaim deeds from T&R and plaintiff were forgeries. The affidavits offered

by from it employees, Ernest Karr and Eugene Hunter, stated that their signatures were forged on both quitclaim deeds. Procuring a grantor's signature by fraudulent manipulation of papers constitutes forgery and precludes acquisition of interests under the forged instrument. *Horvath v Nat'l Mortgage Co*, 238 Mich 354, 360; 213 NW2d 202 (1927).

McKelton and Argent argue that even if the deeds were forged, the 2002 quitclaim deeds are "not pertinent" to resolve their interest in the property. Instead, McKelton and Argent contend that they obtained legal title in the property when Norris conveyed his interest in the property to McKelton by warranty deed on February 18, 2003.

When the land contract was executed on October 22, 2001, "equitable title" passed to Norris while legal title remained with plaintiff until the contractual obligations contained in the land sale contract had been fulfilled, i.e., when Norris paid in full the $15,000 purchase price set forth in the land contract. *Graves*, *supra* at 616. Further, Norris had the right to convey his equitable interest in the property by way of sale, devise or encumbrance. *Id*.

However, Norris, as holder of equitable title to the property, could not transfer legal title to McKelton until he fully paid and performed the obligations under the land contract and received a deed of conveyance from plaintiff. MCL 565.361(1). The record reveals that Norris failed to fully perform his obligations under the land contract. Norris defaulted on the land contract when he failed to make the required monthly payments on the property from January 1, 2003, to May 1, 2003. The record reveals that Norris owed $1,575 in past due principal and interest and failed to correct the default prior to attempting to transfer legal title to McKelton. Since Norris failed to pay the land contract in full, and plaintiff did not convey a deed to Norris, Norris's attempt to convey legal title to the property to McKelton by warranty deed on February 18, 2003, was ineffective. Furthermore, the mortgage executed by McKelton in favor of Argent and the mortgage executed by McKelton in favor of Norris were both ineffective. Since McKelton did not have legal title to the property on either February 14, 2003, or February 18, 2003, Argent's mortgage and Norris's mortgage did not affect the legal title to the property. Therefore, we conclude that plaintiff made a prima facie showing of title and that McKelton and Argent failed to show that they had superior right or title. Accordingly, the trial court properly granted plaintiff's motion for summary disposition and quieted title in favor of plaintiff.

Affirmed.

/s/ Jessica R. Cooper
/s/ Janet T. Neff
/s/ Stephen L. Borrello