

STATE OF MICHIGAN
COURT OF APPEALS

J & S PROPERTIES, INC.,

Plaintiff-Appellee,

v

ALBA D'AGOSTINI,

Defendant-Appellant,

and

TODD FALKNER and DIAMOND CREEK
HOMES, INC.,

Defendants.

UNPUBLISHED

January 22, 2009

No. 281841

Macomb Circuit Court

LC No. 2006-004706-CH

Before: Cavanagh, P.J., and Jansen and Meter, JJ.

PER CURIAM.

Defendant D'Agostini appeals as of right from a circuit court order granting plaintiff's motion for summary disposition with respect to defendant's counterclaim for slander of title. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant hired plaintiff to perform home remodeling work. The job took longer than expected and defendant was dissatisfied with the workmanship. Plaintiff contended that it had substantially completed the contract and had not been paid in full. It filed a construction lien against the property to secure payment. Defendant contended that plaintiff had breached the contract and was not entitled to any additional payment. She filed a counterclaim that included a claim for slander of title. The trial court dismissed that claim before trial.

The trial court's ruling on a motion for summary disposition is reviewed de novo on appeal. *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 344; 745 NW2d 137 (2007). A motion brought under MCR 2.116(C)(10) tests whether there is a genuine issue of fact for trial. When reviewing a motion under subrule (C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant record evidence in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists warranting a trial. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "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 v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

An action for slander of title provides “a remedy for malicious publication of false statements that disparage a plaintiff’s right in property.” *B & B Investment Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998). “The elements of slander of title are (1) falsity of the statement made, and (2) malice.” *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 469; 487 NW2d 807 (1992). Malice can be express or implied. *Glieberman v Fine*, 248 Mich 8, 12; 226 NW 669 (1929). Express malice is made out by showing that the lien claimant knowingly filed an invalid lien with the intent to cause injury. See *Stanton v Dachille*, 186 Mich App 247, 262; 463 NW2d 479 (1990). Implied malice is a wrongful act done intentionally without just cause or excuse. *Glieberman, supra* at 12. “Malice may not be inferred simply from the filing of an invalid lien” *Sullivan v Thomas Organization, PC*, 88 Mich App 77, 86; 276 NW2d 522 (1979). It may be inferred “from want of probable cause,” *Glieberman, supra* at 12, as where one files a claim of lien but denies the existence of the contract creating an interest in the property. *Sullivan, supra* at 86.

Defendant argues that the trial court erred in granting plaintiff’s motion because she and plaintiff presented competing affidavits that created an issue of fact regarding the malice element of the claim. It is true that defendant expressed a belief that plaintiff acted with malice in filing the lien, a belief that plaintiff stated was unfounded. However, defendant’s mere belief is not sufficient to prove malice; defendant must offer some independent evidence, direct or circumstantial, from which malice may be inferred. Otherwise, one is left with the allegedly invalid lien alone, which is not sufficient. *Id.* Defendant cited the fact that plaintiff filed its claim of lien two days after she filed a complaint with the Department of Labor and Economic Growth and inferred that plaintiff filed its lien in retaliation. However, something more than a mere temporal connection is necessary to prove a causal relationship. See *West, supra* at 186. Defendant presented no information to show or suggest that plaintiff knew that defendant had filed her complaint when it filed its claim of lien. Absent any information to show that plaintiff knew that defendant had filed a complaint against it with the Department of Labor and Economic Growth, it cannot be inferred that plaintiff acted in retaliation for the filing of the complaint. The trial court did not err in granting plaintiff’s motion for summary disposition.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Patrick M. Meter