STATE OF MICHIGAN

COURT OF APPEALS

HUNTINGTON NATIONAL BANK,

Plaintiff-Appellant,

v

GREG KELLY,

Defendant-Appellee.

UNPUBLISHED
October 19, 2010

No. 292992
Wayne Circuit Court
LC No. 08-108049-CK

Before: O'CONNELL, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

In this action, plaintiff appeals as of right from a judgment of no cause of action, following a bench trial, in this action to collect a deficiency judgment under a retail installment sales contract for the purchase of a boat. We affirm.

This Court reviews the trial court's findings of fact at a bench trial for clear error and reviews de novo the court's conclusions of law. *City of Flint v Chrisdom Props, Ltd*, 283 Mich App 494, 498-499; 770 NW2d 888 (2009). This Court also reviews de novo the proper interpretation of a contract. *Id*.

We agree with plaintiff that the trial court erred in determining that the conditions for plaintiff to foreclose were not met because the lien was not perfected. The agreement states, "You will not permit any other lien or security interest to be placed on the goods[.]" The trial court examined provisions of the Marina and Boatyard Storage Lien Act ("MBSLA"), MCL 570.371 *et seq.*, that are relevant to the *enforcement* of a lien by sale of the collateral. However, the agreement does not refer to a lien that was enforceable by sale. It merely refers to "permit[ting a] lien . . . to be placed on the goods[.]"

However, the trial court reached the right result because plaintiff did not present any evidence that defendant violated the provision by permitting a lien to be placed on the boat. The pertinent definition of "permit" includes "to allow to do something," "to allow to be done or occur," and "to tolerate; consent to." *Random House Webster's College Dictionary* (1997). One who "permits" an action is at the very least aware of the action. Plaintiff did not present any evidence that defendant "permit[ted]" a lien to be placed on the boat. Defendant was not a party to the storage contract with the marina. He did not even know where his brother was storing the boat. Plaintiff contended that the lien was placed on or before March 16, 2006, the date of the marina's first letter to defendant. But there was no evidence that defendant "permit[ted]" the

placement of a lien on or before that time. Therefore, the conditions for plaintiff to foreclose were not met. The trial court reached the right result, albeit for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000). Accordingly, we affirm the trial court's judgment of no cause of action.

Affirmed.

/s/ Peter D. O'Connell
/s/ Deborah A. Servitto
/s/ Douglas B. Shapiro