STATE OF MICHIGAN

COURT OF APPEALS

HOMESALES, INC., Plaintiff/Counter-Defendant-Appellant,	UNPUBLISHED March 8, 2016
v	No. 326835 Kent Circuit Court
DOUGLAS L. MILES, DOREEN L. MILES, and NANCY CANADA, Defendants/Counter-Plaintiffs-Appellees.	LC No. 14-001225-CH

Before: SERVITTO, P.J., and GADOLA and O'BRIEN, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendants' motion for summary disposition and dismissing plaintiff's complaint in its entirety. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

In 1972, John and Barbara Bergen conveyed a large tract of land (Parent Parcel) to Douglas and Doreen Miles (defendants). At the time of the conveyance, the property was improved with a single family residence, which was situated within a roughly 1-acre flag-shaped lot that included the residence and driveway (Parcel A) and that was distinct from the rest of the Parent Parcel. By 2007, defendants had improved the property with a new driveway, an in-ground pool, a concrete patio, wooden decks, a wooden wall, and a pole barn. Some of these improvements went beyond the boundaries of Parcel A into the surrounding Parent Parcel.

In 2007, defendants conveyed a portion of the Parent Parcel to Ronald and Joanne Hesselink by warranty deed, but retained approximately 27 acres of the Parent Parcel surrounding Parcel A (the surrounding property that defendants retained has been referred to in the course of this litigation as Parcel B). That same year, defendants obtained two mortgages from JPMorgan Chase Bank, NA (Chase Bank), Mortgage No. 20070417-0041406 ($346,500) and Mortgage No. 20070417-0041407 ($69,300), totaling $415,800. Both of the Chase Bank mortgages described and encumbered only Parcel A. Before executing the mortgages, Chase Bank obtained an appraisal for the residence and surrounding 18 acres, which estimated the fair market value of the property at $462,000. In 2009, defendants obtained a $400,000 loan from

their daughter, Nancy Canada, and executed a mortgage in her favor that described and encumbered only Parcel B.

In November 2009, Chase Bank assigned Mortgage No. 20070417-0041406 ($346,500) to Chase Home Finance, LLC. Chase Home Finance initiated foreclosure proceedings on Parcel A after defendants defaulted on the loan. Following a sheriff's sale, Chase Home Finance conveyed Parcel A to the Federal Home Loan Mortgage Corporation, which then conveyed the parcel to plaintiff via quit claim deed. After acquiring Parcel A, plaintiff alleged that the following defects made the property unmarketable:

> A. The asphalt driveway that provides ingress and egress from Baker Avenue to the Residence significantly encroaches upon Parcel B.
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> B. The Residence's in-ground pool, concrete patio, wood decks, wood fence/wall, and 55 x 80 foot outbuilding all significantly encroach upon Parcel B.
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> C. Parcel A, independent of Parcel B, does not meet Browne Township's minimum lot size, minimum road frontage or minimum rear setback zoning requirements.

In 2014, plaintiff filed a seven-count complaint against defendants, alleging the following: Chase Bank and defendants intended to encumber both Parcels A and B, and due to the mutual mistake of the parties, plaintiff was entitled to equitable reformation of the mortgage documents and deeds, to quiet title to the property, or to an equitable mortgage on Parcel B (Counts I, II, and III); defendants falsely represented that they would pledge both Parcels A and B as security for the Chase Bank loans, and plaintiff was entitled to a money judgment for defendants' fraud (Counts IV, V, and VI); and defendants were unjustly enriched by the Chase Bank loans, so plaintiff was entitled to a money judgment (Count VII). Defendants filed a motion for summary disposition under MCR 2.116(C)(7), (8), and (10). They argued that they were not mistaken regarding what property would be encumbered by the Chase Bank mortgages. They further argued that they never made any material misrepresentations to Chase Bank; they owed no duties of disclosure to Chase Bank; plaintiff conferred no benefit on defendants for purposes of its unjust enrichment claim; and plaintiff's fraud and unjust enrichment claims were time-barred by the applicable statutes of limitation.

Following a hearing on the motion, the trial court concluded that there was "simply a lack of evidence for the proposition that the defendants ever intended to encumber anything more than" Parcel A. The court noted that defendants subsequently executed a mortgage for Parcel B in 2009, which suggested that "they were aware all along that there were two separate parcels and that only . . . the flag lot" was ever encumbered. The court further noted that Chase Bank was a sophisticated lender that "had control over the transaction." Accordingly, the trial court concluded that plaintiff was not entitled to equitable reformation of the mortgage documents or deeds, quiet title, or an equitable mortgage on Parcel B.

The court further concluded that plaintiff's fraud and unjust enrichment claims were time-barred by the most generous six-year statute of limitations, and there was no evidence that

defendants participated in fraudulent or devious behavior. Therefore, the court granted defendants' motion for summary disposition and dismissed plaintiff's complaint in its entirety.

II. EQUITABLE REFORMATION AND MORTGAGE CLAIMS

Plaintiff argues that the trial court erred when it refused to equitably reform the mortgages and deeds, equitably adjust the boundary lines of Parcel A, or impose an equitable mortgage on Parcel B. Plaintiff further contends that the trial court erred by granting defendants' motion for summary disposition because there was a genuine issue of material fact regarding whether Chase Bank and defendants intended to encumber both Parcels A and B. We disagree.

A. STANDARDS OF REVIEW

"Whether a grant of equitable relief is proper under a given set of facts is a question of law that this Court . . . reviews de novo." *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 371; 761 NW2d 353 (2008). This Court also review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim.[1] *Downey v Charlevoix Co Bd of Rd Comm'rs*, 227 Mich App 621, 625; 576 NW2d 712 (1998). Courts must consider the pleadings, affidavits, depositions, admissions, and any other documentary evidence presented in a light most favorable to the nonmoving party. *DeBrow v Century 21 Great Lakes, Inc (After Remand)*, 463 Mich 534, 539; 620 NW2d 836 (2001). Summary disposition under MCR 2.116(C)(10) is appropriate "if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

B. DISCUSSION

"Michigan courts sitting in equity have long had the power to reform an instrument that does not express the true intent of the parties . . . ." *Johnson Family*, 281 Mich App at 371-372. To obtain equitable reformation, however, "a plaintiff must prove a mutual mistake of fact, or mistake on one side and fraud on the other, by clear and convincing evidence." *Casey v Auto Owners Ins Co*, 273 Mich App 388, 398; 729 NW2d 277 (2006). A mutual mistake of fact is "an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction." *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006). The burden of proof is on the party seeking reformation. *ER Brenner Co v Brooker Engineering Co*, 301 Mich 719, 724; 4 NW2d 71 (1942). "If the asserted mutual

[1] Defendants brought their motion for summary disposition under MCR 2.116(C)(7), (8), and (10), and the trial court did not specify under which subsection it decided the motion. However, because the trial court considered evidence outside of the pleadings and did not dispose of the equitable reformation and mortgage claims because they were time-barred, we review the trial court's decision on these claims under (C)(10). See *Driver v Hanley*, 226 Mich App 558, 562; 575 NW2d 31 (1997).

mistake is with respect to an extrinsic fact, reformation is not allowed, even though the fact is one which would have caused the parties to make a different contract, because courts cannot make a new contract for the parties." *Dingeman v Reffitt*, 152 Mich App 350, 358; 393 NW2d 632 (1986).

"Generally an equitable mortgage will be imposed if it is shown that there was an intention to place a lien on the real estate or a promise that the real estate would be used as security but for some reason the intended purpose was not accomplished." *Eastbrook Homes, Inc v Dep't of Treasury*, 296 Mich App 336, 352; 820 NW2d 242 (2012) (quotation marks and citation omitted). Courts must consider all of the facts and circumstances to determine whether there was an agreement between the parties that identified a parcel of property intended to act as security for a debt. *In re Moukalled Estate*, 269 Mich App 708, 719; 714 NW2d 400 (2006). "In the absence of a written contract, an equitable lien will be established only where, through the relations of the parties, there is a clear intent to use an identifiable piece of property as security for a debt." *Senters v Ottawa Savings Bank, FSB*, 443 Mich 45, 53; 503 NW2d 639 (1993).

Plaintiff contends that defendants and Chase Bank intended to encumber both Parcels A and B, or, at a minimum, the residence and its accompanying improvements, so as not to create zoning and encroachment issues. Yet, plaintiff has not offered any evidence that defendants intended to pledge Parcel B, or any part thereof, as security for the debt owed to Chase Bank. Nor has plaintiff shown that defendants mistakenly believed that the Chase Bank mortgages encumbered anything other than Parcel A.

Plaintiff argues that the home appraisal, which valued the residence and surrounding 18 acres at $462,000, the loans from Chase Bank totaling $415,800, and the illogic of splitting permanent improvements on the property, created a genuine issue of material fact regarding the parties' intent. However, the fact that the appraisal took into account more than just Parcel A does not provide any direct evidence of the parties' intent. Even if it did, the appraisal is inconsistent with plaintiff's claim that the parties intended to encumber both Parcels A and B (28 acres), or the residence and its immediate improvements in compliance with local zoning requirements (4.3 acres). Likewise, the fact that the residence and surrounding 18 acres had an appraised fair market value of $462,000 does not reveal that the parties intended to encumber more than Parcel A, when the Chase Bank loans totaled only $415,800. The fact that the listed parcel split some of the residence's adjacent improvements also is not direct evidence that the parties intended to encumber anything more than Parcel A.[2]

In contrast, defendants offered the affidavit of co-defendant Douglas Miles in support of their motion for summary disposition, in which he stated that he "never intended to encumber Parcel B" and that he "never had a mistaken belief" that either of the Chase Bank mortgages encumbered Parcel B. Plaintiff's counsel also admitted at the summary disposition hearing that there was nothing in its file that suggested there was something "signed by the borrowers that

[2] Indeed, a bedrock principle in American contract jurisprudence is that parties are free to contract as they see fit, and courts are to enforce agreements as written absent highly unusual circumstances. See *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 51; 664 NW2d 776 (2003).

says [they] intended to encumber both [Parcels A and B]." Therefore, the trial court did not err by concluding that plaintiff failed to demonstrate a genuine issue of material fact regarding the intent of the parties to the mortgage contracts.

Moreover, equity will not come to the aid of a party whose condition is the result of its own failure to exercise the diligence of a reasonable person. *Powers v Ind & Mich Electric Co*, 252 Mich 585, 588; 233 NW 424 (1930). This is particularly true when the party attempting to invoke equitable relief on the basis of mistake is a sophisticated commercial lender. *Townsend v Chase Manhattan Mtg Corp*, 254 Mich App 133, 140; 657 NW2d 741 (2002). Both of the mortgages executed between Chase Bank and defendants clearly identified the parcel and tax identification number for Parcel A, and listed the address associated only with Parcel A. With reasonable diligence, Chase Bank could have ascertained what improvements were included in the listed parcel by obtaining a survey and could have determined whether the parcel complied with zoning requirements by reviewing local zoning ordinances. Plaintiff could have done likewise. Accordingly, the trial court did not err by refusing to exercise its equitable powers to reform the mortgage documents, deeds, or property boundary lines, or by refusing to impose an equitable mortgage on Parcel B. The trial court properly granted defendants' motion for summary disposition on these claims.

III. FRAUD AND UNJUST ENRICHMENT CLAIMS

Plaintiff next contends that the trial court improperly dismissed its fraud and unjust enrichment claims, for which plaintiff was seeking a money judgment. We conclude that plaintiff lacks standing to assert these claims.[3]

"[A] litigant has standing whenever there is a legal cause of action." *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 MW2d 686 (2010). If a cause of action is not provided at law, a court must use its discretion to determine whether a litigant has standing. *Id*. "A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large . . . ." *Id*. Plaintiffs must assert their own legal rights and cannot rest their claims on the interests of third parties. *Barclae v Zarb*, 300 Mich App 455, 483; 834 NW2d 100 (2013). A plaintiff must possess standing before a court can exercise jurisdiction over the plaintiff's claims. *Miller v Allstate Ins Co*, 481 Mich 601, 606; 751 NW2d 463 (2008).

Although plaintiff has standing to assert its equitable reformation and mortgage claims by virtue of the fact that it owns a portion of the land underlying the controversy and has a property interest that would be affected by a favorable ruling,[4] "a plaintiff must demonstrate standing

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[3] Whether a party has standing is question of law that we review de novo. *Groves v Dep't of Corrections*, 295 Mich App 1, 4; 811 NW2d 563 (2011).

[4] "Reformation of written instruments may be had by the immediate parties and by those standing in privity with them." *Biondo v Ridgemont Ins Agency, Inc*, 104 Mich App 209, 212; 304 NW2d 534 (1981). If a litigant is not an immediate party to a contract or does not stand in privity with either of the parties to the contract, the litigant lacks standing to seek reformation.

separately for each form of relief sought." *Monsanto Co v Geertson Seed Farms*, 561 US 139, 153; 130 S Ct 2743; 177 L Ed 2d 461 (2010) (quotation marks and citation omitted). Pursuant to its fraud and unjust enrichment claims, plaintiff is seeking a money judgment on the basis of defendants' allegedly improper conduct toward Chase Bank. Plaintiff was not the recipient of defendants' allegedly fraudulent actions, and was not the entity that provided any unjust benefit to defendants. Further, plaintiff is not seeking relief on these claims that would affect its interest in Parcel A in any way. Accordingly, plaintiff lacks legal standing to pursue its claims of fraud and unjust enrichment, and the trial court properly granted defendants' motion for summary disposition on these claims.[5]

Affirmed.

/s/ Deborah A. Servitto
/s/ Michael F. Gadola
/s/ Colleen A. O'Brien

Id. at 212-213. Our Supreme Court has defined "privity" to include "mutual or successive relationships to the same right of property." *Phinisee v Rogers*, 229 Mich App 547, 553; 582 NW2d 852 (1998) (quotation marks and citation omitted).

[5] Although the trial court did not dismiss plaintiff's fraud and unjust enrichment claims on the basis of a lack of legal standing, we will not reverse the trial court for reaching the same result, albeit for different reasons.