STATE OF MICHIGAN

COURT OF APPEALS

ANNETTA LOGAN, Plaintiff-Appellant,	UNPUBLISHED June 23, 2011
v	No. 297003 Berrien Circuit Court
RICHARD VANCE, EMILY HECHT, HECHT & HECHT, L.L.C., and the DONALD J. NEUSER REVOCABLE TRUST, and DONALD J. NEUSER,[1] Defendants-Appellees.	LC No. 2009-000001-CZ

Before: TALBOT, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

In this dispute surrounding the transfer of real property, plaintiff Annetta Logan appeals as of right the trial court's order granting summary disposition under MCR 2.116(C)(10) in favor of defendants Emily Hecht, Hecht & Hecht, LLC (collectively the Hecht defendants) and the Donald J. Neuser Revocable Trust as to her fraudulent conveyance and tortious interference with business expectancy claims. Because we conclude there were no errors warranting relief, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case has its origins in a property deal that Logan and her then husband, Richard Vance, entered into during their marriage. In August 2006, Logan and Vance, as husband and wife, signed a real estate purchase agreement with Neuser Management, LLC. As part of the purchase agreement, Donald J. Neuser agreed to lease Logan a property located at 221 West Main Street in the city of Benton Harbor for one year with a one year option to purchase the property for $135,000. Vance later entered into a lease agreement with Donald Neuser for the properties at 209, 211, 221, 225 and 229 West Main Street (the Ridge and Kramer property),

[1] Although Donald J. Neuser is listed as a defendant-appellee, the trial court entered an uncontested order dismissing Donald in his individual capacity on May 7, 2010.

which also included an option to purchase the properties for $135,000. There was a factual dispute regarding whether the Neuser Trust subsequently granted Logan and Vance a six-month extension of the option to purchase the Ridge and Kramer property.

In April 2007, Logan sued for a divorce from Vance. While the divorce was pending, Vance contacted Hecht, a social acquaintance, about purchasing the Ridge and Kramer property for $189,000, even though he might not have had any interest in the property at the time. The evidence suggests that Vance sought to broker the sale of the Ridge and Kramer property from the Neuser Trust to the Hecht defendants in a way that might enable him to later obtain a portion of the property from Hecht without purchasing it. Vance told Hecht that she could purchase one of the buildings on the property for $137,500, which was actually the amount the Neuser Trust was asking for the entire property.[2] Vance claimed that the property would be divided with other purchasers who would cover the rest of the property costs. When Logan discovered that Vance was negotiating the sale of the Ridge and Kramer property, she brought it to the attention of the divorce court. The divorce court entered an order requiring the sale of any proceeds from the property to be escrowed.

In February 2008, Hecht & Hecht, LLC entered into a purchase agreement for the entire Ridge and Kramer property for $137,500. Hecht claimed that she still believed she was only receiving title to one of the buildings on the property and was prepared to execute a quitclaim deed for the rest of the property to Vance for the other purchasers. When Hecht learned the total price of the property was $137,500, not $189,000 as Vance had led her to believe, Hecht refused to deed any of the property to Vance or anyone else.

In May 2008, Logan raised the issue in the divorce court again, and the court entered a second order requiring any proceeds from the sale of the Ridge and Kramer property to be placed into escrow. In June 2008, Logan and Vance stipulated to a divorce judgment that awarded Logan "one-half of any and all proceeds resulting from the sale of 229 West Main, Benton Harbor, Michigan up to $132,000."

Logan sued Vance, the Hecht defendants, the Neuser Trust and Donald Neuser in January 2009. She alleged that the sale of the Ridge and Kramer property was fraudulent and should be voided under MCL 566.221. She also claimed that the defendants tortiously interfered with a business expectancy.

In February 2010, the trial court dismissed Logan's claims under MCR 2.116(C)(10). The trial court determined that neither Logan nor Vance exercised the option to purchase the Ridge and Kramer property. Therefore, they had no property interest and there was no basis for voiding the sale. The court also determined that Logan could not meet the valid business relationship or expectation element for a tortious interference claim. Additionally, because there was no evidence that Vance received any proceeds from the transfer of the Ridge and Kramer property, Logan failed to meet the damages element of the tortious interference claim.

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[2] Hecht formed Hecht & Hecht, LLC with her brother in order to purchase the building.

This appeal followed.

II. DEFAULT

A. STANDARD OF REVIEW

Logan first argues that the trial court erred in setting aside the default against the Hecht defendants. We review a trial court's decision on a motion to set aside a default for an abuse of discretion. *Shawl v Spence Bros, Inc*, 280 Mich App 213, 218, 220; 760 NW2d 674 (2008). An abuse of discretion "occurs only when the trial court's decision was outside the range of reasonable and principled outcomes." *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007).

B. ANALYSIS

Typically, a trial court may set aside a default "only if good cause is shown and an affidavit of facts showing a meritorious defense is filed." MCR 2.603(D)(1). Good cause is shown when there is "(1) a substantial irregularity or defect in the proceeding upon which the default is based, or (2) a reasonable excuse for failure to comply with the requirements that created the default." *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 230; 600 NW2d 638 (1999). Although manifest injustice is often cited as a basis to show good cause, "manifest injustice is *not* a third form of good cause that excuses failure to comply with the court rules where there is a meritorious defense." *Barclay v Crown Bldg & Dev, Inc*, 241 Mich App 639, 653; 617 NW2d 373 (2000), citing *Alken-Ziegler*, 461 Mich at 230-233. Rather, manifest injustice "is the result that would occur if a default were not set aside where a party has satisfied the 'good cause' and 'meritorious defense' requirements of the court rule. *Id.* at 653. "[I]f a party states a meritorious defense that would be absolute if proven, a lesser showing of 'good cause' will be required than if the defense were weaker in order to prevent a manifest injustice." *Id*. at 233-234.

In determining whether there was good cause, the trial court considered the complexity of the litigation, the timing of events, and the reasonableness of counsel's request for information from the Hecht defendants. *Shawl*, 280 Mich App at 238. This was a multi-party litigation, which involved a separate divorce case to which the Hecht defendants were not a party, and the complaint included 76 allegations and was over 70 pages in length with exhibits. There was evidence that the Hecht defendants contacted counsel 10 to 14 days after service, and counsel requested documentation needed to file an answer. The trial court found this to be a reasonable request. And the Hecht defendants only missed the deadline for filing the answer by a short amount of time; they filed the motion to set aside the default along with the answer and affirmative defenses just seven business days after the default. See *id*. The trial court had the discretion to determine how much weight to assign this evidence. *Shawl*, 280 Mich App at 239 ("[I]t is within the trial court's discretion to determine how much weight any single factor in determining good cause should receive."). Furthermore, Hecht's affidavit and the Hecht defendants' pleadings showed clear grounds for summary disposition because Logan could not prove the elements for fraudulent transfer and tortious interference claims. *Shawl*, 280 Mich App at 238. Under the facts, it was evident that the Hecht defendants had a nearly absolute defense to the claims against them. For that reason, they could establish good cause on a lesser

showing. *Alken-Ziegler, Inc*, 461 Mich at 233-234. Therefore, on this record, we cannot conclude that the trial court's decision to set aside the default was outside the range of reasonable and principled outcomes. See *Saffian*, 477 Mich at 12.

III. RES JUDICATA

Next, Logan argues the trial court erred when it determined that her fraudulent transfer and tortious interference with a business expectancy claims were barred by res judicata. This argument is based on a misinterpretation of the record. The trial court's res judicata order did not bar Logan's fraudulent transfer or tortious interference with a business expectancy claims against the Hecht defendants or the Neuser Trust. Further, any issue related to whether the trial court improperly barred Logan's claims against Vance under res judicata has been abandoned because Logan did not brief the issue. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

IV. SUMMARY DISPOSITION

A. STANDARDS OF REVIEW

Finally, Logan argues the trial court erred by granting summary disposition under MCR 2.116(C)(10) because there was a genuine issue of material fact concerning the elements of the fraudulent transfer and the tortious interference with a business expectancy claims. This Court reviews de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Id*. at 120. Summary disposition is properly granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10).

B. ANALYSIS

Generally, a creditor may challenge the validity of a transfer from the creditor's debtor to a third party by showing that the transfer was fraudulent as to the creditor. See MCL 566.37. A transfer is fraudulent as to a creditor where the transfer was made with the actual intent to hinder, delay, or defraud the creditor. See MCL 566.34(1)(a); see also MCL 566.221 (stating that a conveyance of an interest in land is void if done with "the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts or demands . . . .").

Here, although Logan could be considered Vance's creditor, she did not demonstrate that Vance had any interest in the property at issue that he transferred to a third-party. Further, she was not a creditor of the Neuser Trust. Indeed, the evidence showed that Logan had no relationship with either of the actual parties to the transfer that could serve as a basis for challenging the transfer. Instead, her claim was premised on speculation—admittedly supported by some evidence—that, at some point in the future, Hecht might transfer a portion of the property to Vance without any consideration. That is, Logan wanted to void a present transfer of

property between third-parties, with whom she had no creditor relationship, on the basis that the buyer *might* gift a portion of the property to Vance in a future transaction.[3] But the fact that the property might be the subject of a later gift is not a ground for voiding the transaction at issue. Consequently, the trial court correctly determined that Logan had not established a question of fact as to her fraudulent transfer claims.

Similarly, Logan failed to establish a question of fact on the elements of her tortious interference claim. To establish this claim, she had to present evidence establishing the "existence of a valid business relationship or expectancy", that the Neuser Trust and Hecht defendants knew about "the relationship or expectancy" and that they intentionally induced a breach or termination of the relationship or expectancy with resultant damages. *BPS Clinical Laboratories v Blue Cross & Blue Shield of Mich (On Remand)*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996).

Logan clearly could not maintain a cause of action for tortious interference against the Neuser Trust or Vance because they were parties to the option agreement at issue in this claim. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 382; 689 NW2d 145 (2004) ("A plaintiff, who is party to a contract, cannot maintain a cause of action for tortious interference against another party to the contract."). Additionally, Logan failed to raise genuine issues of material fact concerning the elements of her tortious interference claim against the Hecht defendants. There was no evidence that the Hecht defendants had actual knowledge of Logan's business expectancy or that they intentionally interfered with her business relationship with the Neuser Trust thereby causing a breach or termination of her expectancy. Logan's accusations alone are insufficient to establish that the Hecht defendants did any act that was wrongful per se, and Logan failed to identify affirmative acts by the Hecht defendants that corroborate the improper motive of interference. See *Feldman v Green*, 138 Mich App 360, 369-370; 360 NW2d 881 (1984). Logan also did not challenge the Hecht defendants' evidence that they had a legitimate business purpose for buying the Ridge and Kramer property to help revitalize Benton Harbor. Lastly, neither Logan nor Vance exercised the option to purchase and Logan failed to present any evidence that, but for the Hecht defendants' interference, she or Vance would have purchased the property. Finally, even though she was entitled to half of any proceeds Vance received from the property, the undisputed evidence showed that Vance did not receive any proceeds. Hence, Logan failed to present any evidence that she suffered damages as a result of the Hecht defendants' wrongful interference with any expectancy that she might have had with regard to the property at issue.

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[3] We note that there was evidence that would permit an inference that Vance was trying to defraud Hecht. Yet the fact that Vance might have profited from a fraud against Hecht is not a ground for Logan to challenge the transfer from the Neuser Trust to the Hecht defendants because that transfer would not be fraudulent as to her.

The trial court properly granted summary disposition in favor of the Hecht defendants and the Neuser Trust.

Affirmed. As the prevailing parties, the Hecht defendants and Neuser Trust may tax their costs. MCR 7.219(A).

/s/ Michael J. Talbot
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly