

STATE OF MICHIGAN
COURT OF APPEALS

JOHN THORPE and DEBRA THORPE, formerly
known as DEBRA RADEMACHER,

UNPUBLISHED
April 18, 2013

Plaintiffs-Appellees,

v

Nos. 304499 & 304922
Lapeer Circuit Court
LC No. 09-041926-CH

CHRISTOPHER M. PAPADELIS and TERESA
P. PAPADELIS, Individually and as Trustees of
the PAPADELIS FAMILY TRUST,

Defendants/Cross-Plaintiffs-
Appellees.

and

LAPEER COUNTY SHERIFF,

Defendant,

and

STEPHEN R. BRASKI, LA-MAR CUSTOM
BUILDERS, L.L.C. and LAWRENCE VOELPEL,

Defendants/Cross-Defendants-
Appellants.

Before: M.J. KELLY, P.J., and CAVANAGH and MURRAY, JJ.

PER CURIAM.

Defendants/Cross-Defendants Stephen R. Braski, La-Mar Custom Builders, LLC,¹ and Lawrence Voelpel (collectively, “defendants”) appeal as of right the trial court’s orders, following a bench trial, granting judgment in favor of plaintiffs John Thorpe and Debra Thorpe (collectively “plaintiffs”) on the improper foreclosure, slander of title, breach of contract/breach of warranty, and fraud claims (counts I, II, III, and IV) from the first amended verified complaint

¹ La-Mar is Lawrence Voelpel’s building company.

and granting judgment in favor of defendants/cross-plaintiffs Christopher M. Papadelis, Teresa P. Papadelis, and the Papadelis Family Trust (collectively, “the Papadelises”) on the cross-claim. We affirm in part and reverse in part.

I. FACTS AND PROCEEDINGS

The case arises from the unsuccessful attempts of several persons over the course of time to split a plat of land, known as lot 14, which is located at 3184 Wynns Mill Court, Metamora, Michigan and consists of 1.73 acres, into two pieces. Originally, Braski purchased lot 14, but he did not build a house on the property.

In 1997, Voelpel, Braski’s best friend who was very familiar with residential mortgage lending and house construction, approached Hadley Township about dividing lot 14 into two parts, and in July 2002, Braski submitted a formal application requesting a zoning variance to divide lot 14 into two parts: a one acre parcel (“parcel A”) and a .73 acre parcel (“parcel B”). Braski’s application was denied by the zoning board because the proposed second parcel was less than one acre in size and it was not well suited for an additional septic system to build an additional house.

Subsequently, in February 2003, Braski sold lot 14 to the Papadelises for \$225,000. At that time, Braski conveyed lot 14 in its entirety by warranty deed and the Papadelises owned all 1.73 acres of lot 14. The Papadelises then began building a house on lot 14, and it was completed in October 2003. After the Papadelises’ house was completed, the Papadelises were approached by Voelpel about the possibility of building another house on lot 14. The parties agreed that if the Papadelises could achieve a division of lot 14, the Papadelises would pay Voelpel additional money. To memorialize this agreement, in October 2003, Voelpel drafted a land contract, a mortgage, and a promissory note that the Papadelises signed even though at that time they actually owned lot 14 in its entirety and parcel B of lot 14 did not legally exist. Although no money was actually exchanged under either the promissory note or the mortgage, Braski and La-Mar conveyed parcel B of lot 14 to the Papadelises by quitclaim deed. The October 2003 land contract and promissory note were not recorded, but Voelpel did record the October 2003 mortgage. After these October 2003 documents were created, the Papadelises twice attempted to split lot 14 and Voelpel cooperated with these efforts. Additionally, in February 2004, the Papadelises transferred, by quitclaim deed, parcel B of lot 14 to Braski and La-Mar for one dollar.

In August 2007, the Papadelises and plaintiffs entered into a purchase agreement for lot 14. The original purchase agreement stated that the sale was for “parcel A” of lot 14 for \$957,500. But, when plaintiffs applied for a mortgage to finance their purchase of lot 14, they were informed by their banker that the survey did not match the legal description of lot 14. This was the first time plaintiffs learned that lot 14 was 1.73 acres and not one acre. Thereafter, the Papadelises agreed to sell all 1.73 acres of lot 14 to plaintiffs for the same price.

In order to receive a discharge of the October 2003 mortgage, the Papadelises and defendants agreed that the Papadelises would enter into the forfeiture and deed escrow agreement with plaintiffs that would give Braski and Voelpel an additional three years to divide lot 14 and the Papadelises signed a September 2007 promissory note and agreement that

indicated that the October 2003 land contract on parcel B of lot 14 would continue after the sale of lot 14 to plaintiffs.

Nonetheless, in September 2007, prior to the closing, Braski sent instructions to the individual in charge of the closing, Sylvia Rhodes, stating that a payoff amount of \$50,000 was required for the discharge of the October 2003 mortgage. Ultimately, however, Rhodes did not follow Braski's instructions because the Papadelises, the Papadelises' agent, and plaintiffs' agent all informed Rhodes that separate arrangements had been made to discharge the October 2003 mortgage. Additionally, despite his instructions, on September 27, 2007, Braski signed a discharge of the October 2003 mortgage between him and the Papadelises for parcel B of lot 14.

On September 28, 2007, plaintiffs purchased lot 14 in its entirety from the Papadelises for \$957,500 by warranty deed. Additionally, the Papadelises and plaintiffs entered into the forfeiture and deed escrow agreement. According to the terms of the forfeiture and deed escrow agreement, the Papadelises were to transfer by warranty deed all of lot 14 to plaintiffs. The Papadelises were to have three years to accomplish a division of lot 14. Plaintiffs were to place a warranty deed for the .73 acres in escrow that the Papadelises would receive upon actually accomplishing a division of lot 14. If the division was not actually accomplished within three years, the warranty deed in escrow was to be destroyed.

After the closing was completed, Rhodes received a phone call from Voelpel asking for Braski's \$50,000 payment. Rhodes informed Voelpel that she believed that Braski was not owed any money for his September 2007 discharge of the October 2003 mortgage. Voelpel then requested that the September 2007 discharge not be recorded until the \$50,000 was paid. Subsequently, Voelpel called the Papadelises demanding \$50,000. The Papadelises called the title company, who informed them that the October 2003 mortgage did not require a \$50,000 payoff to be discharged, so, the Papadelises believed that the September 2007 discharge was valid. But, in October 2007, Voelpel sent e-mails to Rhodes indicating that Braski had only agreed to the September 2007 discharge of the October 2003 mortgage upon the payment of \$50,000 and on October 18, 2007, the September 2007 discharge was withdrawn.

In April 2008, despite the fact that Braski and Voelpel knew that plaintiffs had purchased lot 14 in its entirety, Braski attempted to record the quitclaim deed to parcel B of lot 14 given to him by the Papadelises in February 2004. However, Hadley Township refused to record the April 2008 quitclaim deed because parcel B of lot 14 did not exist. Later, in February 2009, Braski began foreclosure by advertisement proceedings and in June 2009 a sheriff's deed was recorded on parcel B of lot 14. The sheriff's deed gave ownership of parcel B of lot 14 to Braski. Braski acknowledged that he could not sell the .73 acres in the June 2009 sheriff's deed because lot 14 has not been divided.

Following these events, in September 2009, plaintiffs filed a complaint against the Papadelises, Braski, and the Lapeer County Sheriff alleging improper foreclosure, slander of title, breach of contract/breach of warranty, and fraud. Subsequently, in May 2010, plaintiffs

filed their first amended verified complaint against the Papadelises, the Lapeer County Sheriff,² Braski, La-Mar, and Voelpel alleging improper foreclosure (count I), slander of title (count II), breach of contract/breach of warranty (count III), fraud (count IV), declaratory judgment for invalid mortgage and foreclosure (count V), and intentional abuse of process (count VI). Additionally, in June 2010, the Papadelises filed a cross-claim against defendants alleging improper foreclosure (count I), declaratory judgment for invalid mortgage and foreclosure (count II), and fraudulent cloud on marketable title (count III).

In November 2010, a bench trial commenced on the first amended verified complaint and the cross-claim. Upon the completion of trial, the parties submitted written motions for directed verdict and their closing arguments. In February 2011, the trial court issued an opinion granting the Papadelises' motion for a directed verdict on plaintiffs' first amended verified complaint, denying defendants' motion for a directed verdict on the first amended verified complaint and the cross-claim, granting judgment in favor of plaintiffs against defendants on the improper foreclosure, slander of title, breach of contract/breach of warranty, and fraud claims from the first amended verified complaint, and granting judgment in favor of the Papadelises against defendants on the cross-claim. The trial court also entered an order quieting title to lot 14 in plaintiffs.

In March 2011, the trial court held a hearing on attorney fees, costs, and damages and in May 2011, the trial court issued an opinion awarding plaintiffs and the Papadelises attorney costs and fees pursuant to MCL 565.108 to be paid by Braski and Voelpel. The trial court entered an order requiring defendants to pay plaintiffs \$152,084 for legal fees plus \$4,437.81 in costs and interest. In June 2011, the trial court entered an order granting the Papadelises' motion for a directed verdict on all claims in plaintiffs' first amended verified complaint. The order also granted judgment in favor of the Papadelises on their cross-claim against defendants. The trial court awarded the Papadelises \$17,280 for attorney fees and \$874.80 for costs against Braski and Voelpel.

In Docket No. 304499, defendants appeal as of right the trial court's May 2011 order and June 2011 order. In Docket No. 304922, defendants appeal as of right the trial court's June 2011 order. In August 2011, this Court consolidated these appeals to advance the efficient administration of the appellate process. *Thorpe v Papadelis*, unpublished order of the Court of Appeals, entered August 11, 2011 (Docket Nos. 304499 & 304922).

II. ANALYSIS

A. FINDINGS OF FACT

Defendants argue that the trial court erred in its findings of fact following the bench trial regarding the improper foreclosure, slander of title, breach of contract/breach of warranty, and fraud claims from the first amended verified complaint and the cross-claims. "This Court

² The trial court granted the Lapeer County Sheriff's motion for summary disposition and he was dismissed from the case.

reviews a trial court's findings of fact following a bench trial for clear error and reviews de novo the trial court's conclusions of law." *Redmond v Van Buren Co*, 293 Mich App 344, 352; 819 NW2d 912 (2011). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake was made." *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 296; 769 NW2d 234 (2009) (quotation marks and citation omitted).

1. IMPROPER FORECLOSURE³

There is record evidence to support the trial court's ruling that the foreclosure was improper. In Michigan, although a precise description of the property is not necessary to make a conveyance of real property valid, the description must be sufficient enough to allow a person to locate the property with certainty. *Tandy v Knox*, 313 Mich 147, 155; 20 NW2d 844 (1945); *Stamp v Steele*, 209 Mich 205, 210-211; 176 NW 464 (1920). In this case, all of the parties agree that parcel B of lot 14 is fictitious and does not legally exist. Instead, lot 14 is a single 1.73 acre plot of land that has never actually been divided into two parts. Thus, the October 2003 mortgage, land contract, and promissory note all describe a piece of land that does not legally exist, and thus there was not a valid conveyance of real property. Additionally, the parties agreed that no money or other consideration was ever exchanged under the October 2003 mortgage, land contract, or promissory note, and thus it is clear that a valid agreement was never reached under any of these documents. *Calhoun Co v Blue Cross Blue Shield of Mich*, 297 Mich App 1, 13; 824 NW2d 202 (2012), quoting *Hess v Cannon Twp*, 265 Mich App 582, 592; 696 NW2d 742 (2005) ("There are five elements of a valid contract: '(1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation.'").

Moreover, while Voelpel claimed the incorrect tax identification number on several of these documents was just a scrivener's error, the record evidence supports the trial court's conclusion that this incorrect tax identification number evidenced an improper foreclosure by advertisement process because the "error" only occurred on the documents related to the fictitious parcel B of lot 14. In light of the record evidence that established that the October 2003 mortgage on the fictitious parcel B of lot 14 was not a valid conveyance, this mortgage could not properly be used by defendants to conduct a foreclosure by advertisement sale. Thus, the June 2009 sheriff's deed on the fictitious parcel B of lot 14 was also invalid.

Finally, defendants assert that because the statutory notice requirements for a foreclosure by advertisement sale were followed, there was not an improper foreclosure. Assuming, *arguendo*, that defendants followed the statutory notice requirements of MCL 600.3208 and MCL 600.3212, this adherence to the statutory procedure requirements does not validate the June 2009 sheriff's deed. The record evidence clearly establishes that defendants should have never

³ There does not appear to be a cause of action for "improper foreclosure" in Michigan. Instead, the improper foreclosure is part of the slander of title claim. Thus, although the trial court granted judgment in favor of plaintiffs on this alleged claim, we review this issue as an element supporting plaintiff's slander of title claim.

been able to conduct a foreclosure by advertisement sale using the October 2003 mortgage because this was an invalid mortgage attached to a fictitious piece of real property. Defendants simply never had a valid interest in lot 14 to conduct a foreclosure by advertisement sale. Therefore, the trial court did not err in finding that defendants sought an improper foreclosure.

2. SLANDER OF TITLE

“To establish slander of title . . . a plaintiff must show falsity, malice, and special damages, i.e., that the defendant maliciously published false statements that disparaged a plaintiff’s right in property, causing special damages.” *B & B Investment Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998). “Malice may not be inferred merely from the filing of an invalid lien; the plaintiff must show that the defendant knowingly filed an invalid lien with the intent to cause the plaintiff injury.” *Stanton v Dachille*, 186 Mich App 247, 262; 463 NW2d 479 (1990). Special damages include litigation costs. *B & B Investment Group*, 229 Mich App at 9.

There is record evidence to support the trial court’s findings that defendants acted with malice in recording the invalid June 2009 sheriff’s deed against plaintiffs’ property.⁴ Defendants knew from the beginning of this case that parcel B of lot 14 was a fictitious piece of real property. As early as 1997 or 2002, Braski and Voelpel began attempting to divide lot 14 into two parts, but they were unable to accomplish the division because the township required each residentially zoned lot to be at least one acre in size. In 2002, after the township denied the variance and lot 14 was not divided, Braski sold all 1.73 acres of lot 14 to the Papadelises by warranty deed, a fact that both Braski and Voelpel admitted during their trial testimony. And, as previously indicated, defendants knew that parcel B of lot 14 was fictitious and that any document relating to parcel B of lot 14 (including the October 2003 land contract, mortgage, and promissory note purporting to memorialize the sale of parcel B of lot 14 from Braski and La-Mar to the Papadelises and the April 2008 quitclaim deed) were invalid because lot 14 was never actually divided.

Moreover, once the Papadelises determined that they wished to sell lot 14, they sought and received the September 2007 discharge of the October 2003 mortgage from Braski before they sold all 1.73 acres of lot 14 to plaintiffs. Although defendants had previously agreed to discharge the October 2003 mortgage in exchange for the Papadelises entering into the forfeiture and deed escrow agreement and September 2007 promissory note and agreement, they suddenly demanded \$50,000 to secure the October 2003 mortgage discharge. Thereafter, they purposefully withdrew the September 2007 discharge of the October 2003 mortgage and attempted to record the April 2008 quitclaim deed. Subsequently, beginning in April 2009, defendants commenced a foreclosure by advertisement sale upon the fictitious parcel B of lot 14 using the October 2003 mortgage. On June 11, 2009, defendants recorded the invalid sheriff’s deed to the fictitious parcel B of lot 14 that they received as a result of the improper foreclosure by advertisement proceedings. Thus, the record evidence supports the trial court’s granting of

⁴ Defendants’ failure to assert the statute of limitations as an affirmative defense in their first responsive pleading constituted a waiver of this defense. MCR 2.111(F)(2) and (3); *Walters v Nadell*, 481 Mich 377, 389; 751 NW2d 431 (2008).

judgment in favor of plaintiffs' on the slander of title claim because defendants' actions disparaged plaintiffs' ownership rights to all 1.73 acres of lot 14.

Additionally, defendants argue that the trial court erred in finding that defendants engaged in slander of title against the Papadelises because there is no evidence that defendants slandered the title of any property owned by the Papadelises. However, the Papadelises' cross-claim is not based upon a slander of title action as alleged by defendants, which requires the showing of falsity, malice, and special damages, but rather it is a fraudulent cloud on marketable title action. In the cross-claim, the Papadelises allege that the invalid June 2009 sheriff's deed placed a cloud on plaintiffs' clear title to lot 14 and exposed the Papadelises to liability for failure to provide plaintiffs with marketable title. Marketable title is title that is free from encumbrances and is of such a character as to assure to the purchaser the quiet and peaceable enjoyment of the premises. *Barnard v Brown*, 112 Mich 452, 455; 70 NW 1038 (1897). Thus, the failure to discharge a mortgage is a cloud that renders title unmarketable title:

“A title may be regarded as unmarketable if a reasonably careful and prudent man, familiar with the facts, would refuse to accept the title in the ordinary course of business. It is not necessary that the title be actually bad in order to render it unmarketable. It is sufficient if there is such a doubt or uncertainty as may reasonably form the basis of litigation.” [*Klais v Danowski*, 373 Mich 281, 285; 129 NW2d 423 (1964), quoting *Bartos v Czerwinski*, 323 Mich 87, 92; 34 NW2d 566 (1948).]

In its findings, the trial court concluded that defendants knew that they had no rights to lot 14 because Braski sold lot 14 by warranty deed to the Papadelises. Thus, defendants failure to properly discharge the October 2003 mortgage on the fictitious parcel B to lot 14, and subsequent recording of the invalid 2009 sheriff's deed, constituted fraudulent clouds on the marketable title to lot 14. Thus, based on the record evidence, the trial court properly granted judgment in favor of the Papadelises on their cross-claim.

3. BREACH OF CONTRACT/BREACH OF WARRANTY

To establish a breach of contract, the plaintiff must show: “(1) that there was a contract, (2) that the other party breached the contract and, (3) that the party asserting breach of contract suffered damages as a result of the breach.” *Miller-Davis Co v Ahrens Const, Inc (On Remand)*, 296 Mich App 56, 71; 817 NW2d 609 (2012). To prove a breach of contract, the plaintiff must first prove the existence of a contract between the parties. *Pawlak v Redox Corp*, 182 Mich App 758, 765; 453 NW2d 304 (1990). Additionally, “[a] warranty deed conveys the entire bundle of rights to the property from the grantor to the grantee in fee simple; it also includes the grantor's covenant that the grantor has good, marketable title and guarantees to the grantee the right of quiet possession.” *Eastbrook Homes, Inc v Dep't of Treasury*, 296 Mich App 336, 348; 820 NW2d 242 (2012), citing MCL 565.151.

The record evidence does not support a finding that defendants contractually agreed to provide plaintiffs with marketable title to lot 14, or that they provided a warranty deed conveying lot 14 to plaintiffs. Instead, plaintiffs and the Papadelises entered into the purchase agreement whereby the Papadelises contractually agreed to provide marketable title to lot 14. The

Papadelises further guaranteed marketable title to plaintiffs by conveying lot 14 to plaintiffs by warranty deed. Thus, the trial court erred in granting judgment in favor of plaintiffs on the breach of contract/breach of warranty claim because defendants were not a party to either agreement.

4. FRAUD

A plaintiff asserting a claim of fraud must demonstrate these six elements: (1) that the defendant made a material representation; (2) that it was false; (3) that the defendant made the representation knowing that it was false or made it recklessly without knowledge of its truth; (4) that the defendant intended that the plaintiff would act upon the representation; (5) that the plaintiff relied on the representation; and (6) that the plaintiff suffered injury as a result of his reliance on the representation. [*Lucas v Awaad*, __ Mich App __; __ NW2d __ (Docket Nos. 292785, 292786 & 295973, issued January 29, 2013), slip op, p 10.]

“[F]raud requires a misrepresentation about the past or present.” *Lawrence M Clarke, Inc v Richco Const, Inc*, 489 Mich 265, 284; 803 NW2d 151 (2011). A fraud allegation must be stated with particularity. *Id.*, citing MCR 2.112(B)(1).

There is no record evidence to support the trial court’s findings that defendants engaged in fraud against plaintiffs. Defendants purported to have an interest in the fictitious parcel B of lot 14 through the June 2009 sheriff’s deed. Defendants were able to record the June 2009 sheriff’s deed by first agreeing to discharge the October 2003 mortgage on the fictitious parcel B to lot 14, and then withdrawing the September 2007 discharge after the closing. Defendants then attempted to record the April 2008 quitclaim deed before commencing the foreclosure by advertisement proceedings in 2009. Despite these deceitful and inappropriate acts, there is no record evidence showing that plaintiffs relied upon defendants’ representation that the October 2003 mortgage was discharged when they purchased lot 14. Instead, the record evidence shows that plaintiffs relied upon the Papadelises’ representations that all mortgages had been discharged on lot 14. Consequently, although plaintiffs suffered injury to their title on lot 14 as a result of defendants’ misconduct, the trial court erred in granting judgment in favor of plaintiffs on the fraud claim.

B. DIRECTED VERDICT

Defendants contend that the trial court erred in denying their motion for directed verdict on the first amended verified complaint and the cross-claim. The grant or denial of a motion for a directed verdict is reviewed de novo. *Chouman v Home Owners Ins Co*, 293 Mich App 434, 441; 810 NW2d 88 (2011). “When evaluating a motion for directed verdict, the court must consider the evidence in the light most favorable to the nonmoving party, making all reasonable inferences in the nonmoving party’s favor.” *Id.* (quotation marks and citation omitted). “A directed verdict is appropriate where reasonable minds could not differ on a factual question.” *Id.*

1. SLANDER OF TITLE & FRAUD

In this case, defendants did not present a case-in-chief, but instead rested after plaintiffs completed their proofs and, at the end of trial, the parties submitted briefs to the trial court that addressed the merits for a directed verdict and closing arguments. Thus, the same evidence was used for addressing the directed verdict motion and the merits. As discussed above, the record evidence supported the trial court's rulings on the slander of title claim, but the evidence did not support a finding in favor of plaintiffs' on the fraud claim because plaintiffs did not provide any evidence that they relied upon a misrepresentation made by defendants, a fact that plaintiffs do not address in their brief on appeal.⁵

2. DECLARATORY JUDGMENT FOR INVALID MORTGAGE & FORECLOSURE

In looking at the evidence in the light most favorable to plaintiffs and the Papadelises, the trial court properly denied defendants' motion for a directed verdict on the declaratory judgment for invalid mortgage and foreclosure claims from the first amended verified complaint and the cross-claim. Declaratory judgments are governed by MCR 2.605.⁶ *Adair v Michigan*, 486 Mich 468, 490 n 39; 785 NW2d 119 (2010) remanded 298 Mich App 383 (2012). "An action for a declaratory judgment is typically equitable in nature[.]" *id.* at 490, and it "merely provides an additional remedy that a party may seek[.]" *Lapeer Co Clerk v Lapeer Circuit Judges*, 465 Mich 559, 573 n 9; 640 NW2d 567 (2002).

There was evidence that the June 2009 sheriff's deed and the October 2003 mortgage were invalid. The October 2003 mortgage was based on the fictitious parcel B to lot 14 and defendants used this mortgage to commence the foreclosure by advertisement proceedings that resulted in the June 2009 sheriff's deed. However, defendants argued that the October 2003 mortgage was a valid conveyance because the Papadelises personally signed the October 2003 mortgage, land contract, and promissory note. Furthermore, defendants asserted that the October 2003 mortgage was not properly discharged by the Papadelises because they failed to pay defendants \$50,000, and thus the June 2009 sheriff's deed was valid. Thus, reasonable minds could differ on a factual question regarding whether a declaratory judgment was appropriate.

⁵ The breach of contract/breach of warranty and fraudulent cloud on marketable title claims were not challenged by defendants in their motion for directed verdict.

⁶ MCR 2.605(A) provides:

(1) In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.

(2) For the purpose of this rule, an action is considered within the jurisdiction of a court if the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment.

3. ABUSE OF PROCESS

In looking at the evidence in the light most favorable to plaintiffs, the trial court properly denied defendants' motion for a directed verdict on the abuse of process claim from the first amended verified complaint. "To recover pursuant to a theory of abuse of process, a plaintiff must plead and prove (1) an ulterior purpose, and (2) an act in the use of process that is improper in the regular prosecution of the proceeding." *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 472; 487 NW2d 807 (1992). To succeed on this claim, the plaintiff must show that "the defendant has used a proper legal procedure for a purpose collateral to the intended use of that procedure" and "there must be some corroborating act that demonstrates the ulterior purpose." *Id.* In other words, "a plaintiff making out a claim for abuse of process must allege a use of process for a purpose outside of the intended purpose and must allege with specificity an act which itself corroborates the ulterior motive." *Young v Motor City Apartments Ltd Dividend Housing Ass'n No 1 & No 2*, 133 Mich App 671, 681; 350 NW2d 790 (1984). "A bad motive alone will not establish an abuse of process." *Bonner*, 194 Mich App at 472.

There was evidence that defendants intentionally used the foreclosure by advertisement process in seeking to improperly divide lot 14 into two parts. Defendants first sought a division of lot 14 in 1997 and formally requested a variance in 2002 that was denied. After defendants sold lot 14 to the Papadelises, they convinced the Papadelises that lot 14 could be divided, drafted the October 2003 mortgage, land contract, and promissory note, and recorded the October 2003 mortgage. Once the Papadelises wished to sell lot 14, they sought and received the September 2007 discharge of the October 2003 mortgage from defendants. However, after the closing between the Papadelises and plaintiffs was completed, defendants withdrew their September 2007 discharge and attempted to record the April 2008 quitclaim deed before beginning foreclosure by advertisement proceedings in 2009 that resulted in defendants receiving the June 2009 sheriff's deed for the fictitious parcel B of lot 14. However, defendants argued that they did not use a process outside of its intended use because they followed the statutory notice requirements. Therefore, reasonable minds could differ on a factual question regarding whether defendants intentionally abused the process.

C. COSTS & ATTORNEY FEES

Defendants assert that the trial court erred in awarding costs and attorney fees because the trial court erred in entering judgment in favor of plaintiffs on the slander of title claim. In reviewing a trial court's decision to grant or deny a motion for attorney fees, "[t]his Court reviews the trial court's findings of fact for clear error, and questions of law de novo." *Brown v Home Owners Ins Co*, 298 Mich App 678, __ ; __ NW2d __ (Docket No. 307458, issued December 4, 2012), slip op, p 6. "[T]his Court reviews a trial court's ultimate decision [regarding] whether to award attorney fees for an abuse of discretion." *Id.* Additionally, the interpretation and application of a statute is a question of law that is reviewed de novo. *Adair*, 486 Mich at 477. "Clear and unambiguous statutory language is given its plain meaning, and it is enforced as written." *Ayar v Foodland Distrib*, 472 Mich 713, 716; 698 NW2d 875 (2005).

Attorney fees are recoverable as an element of damages only if expressly allowed by statute, court rule, or a common law exception. *Dessart v Burak*, 470 Mich 37, 42; 678 NW2d 615 (2004). The trial court awarded attorney fees pursuant to MCL 565.108, which provides:

No person shall use the privilege of filing notices hereunder for the purpose of slandering the title to land, and *in any action brought for the purpose of quieting title to land, if the court shall find that any person has filed a claim for that reason only, he shall award the plaintiff all the costs of such action, including such attorney fees* as the court may allow to the plaintiff, and in addition, shall decree that the defendant asserting such claim shall pay to plaintiff all damages that plaintiff may have sustained as the result of such notice of claim having been so filed for record. [Emphasis added.]

Defendants do not challenge the reasonableness or amount of attorney fees awarded to plaintiffs and the Papadelises. Rather, they simply assert that attorney fees were improperly awarded under MCL 565.108 because the evidence failed to establish that they engaged in slander of title. As discussed above, slander of title was established because defendants knowingly and maliciously published false statements about lot 14. Consequently, the trial court had the authority under MCL 565.108 to issue attorney fees to both plaintiffs and the Papadelises because both parties had to file claims “for the purpose of quieting title to land[.]” The trial court properly awarded attorney fees and costs.

Affirmed in part, reversed in part, and remanded for entry of a judgment consistent with this opinion. We do not retain jurisdiction.

No costs, neither party having prevailed in full. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Christopher M. Murray