

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN BASIC PROPERTY INSURANCE
ASSOCIATION,

Plaintiff/Counter-Defendant,

v

CYNTHIA LESLIE and CLIFTON ARNOLD,

Defendants/Cross-Plaintiffs/Cross-
Defendants,

and

LEASE HOMES, INC.,

Defendant,

and

BOBBY MALONE, d/b/a MGM
IMPROVEMENT SERVICES,

Defendant/Cross-Defendant,

and

MBM FINANCIAL SERVICES LLC,

Defendant/Counter-Plaintiff/Cross-
Plaintiff-Appellant,

and

MORTGAGE CENTER LLC,

Defendant/Cross-Defendant-
Appellee.

UNPUBLISHED
November 19, 2013

No. 311071
Wayne Circuit Court
LC No. 11-004335-CZ

Before: SAWYER, P.J., and O'CONNELL and K.F. KELLY, JJ.

PER CURIAM.

In this interpleader action, MBM Financial Services LLC ("MBM") appeals as of right the trial court's order denying MBM's motion for partial summary disposition under MCR 2.116(C)(10), granting the motion for summary disposition under MCR 2.116(C)(10) brought by Mortgage Center LLC ("Mortgage Center"), and ordering that the interpleaded funds be paid to Mortgage Center. We affirm.

I. FACTS

In October 2010, Michigan Basic Property Insurance Association ("MBPIA") issued a check payable to Cynthia Leslie, Clifton Arnold, MGM Improvement Services (the business name of Bobby Malone), and Mortgage Center, as settlement of a property insurance claim made by Cynthia Leslie for fire damage to property owned by Leslie and her husband, Clifton Arnold. Mortgage Center was the mortgagee of the property, and its mortgage interest was insured by the MBPIA policy. Malone was the contractor hired to repair the damage. After Leslie, Arnold, and Malone endorsed the check, they presented the check to MBM, a check cashing service. When presented to MBM, the check contained an invalid endorsement of Mortgage Center. For a fee, MBM cashed the check and paid the face value to Leslie, Arnold, and Malone. Thereafter, MBM deposited the check in its account at First Michigan Bank. The check was then honored and cashed by MBPIA's bank, Fifth Third Bank.

In February 2011, Mortgage Center filed a claim with Fifth Third Bank alleging that Mortgage Center's endorsement was forged. As a result, Fifth Third Bank credited MBPIA's account with the amount of the check. First Michigan then debited MBM's account with the amount of the check and credited that amount to Fifth Third Bank pursuant to its presentment warranty under MCL 440.4207.

Thereafter, MBPIA filed this interpleader action. MBM filed a counter-claim and cross-claim, alleging that MBPIA, as the drawer, was liable to MBM for the amount of the check under MCL 440.3414, and Leslie, Arnold, and Malone were liable as endorsers under MCL 440.3415. In addition, MBM alleged claims of fraud and misrepresentation, breach of contract, and conversion against Leslie, Arnold, and Malone. MBM moved for partial summary disposition under MCR 2.116(C)(10), requesting summary disposition of its claims under MCL 440.3414 and MCL 440.3415. Mortgage Center moved for summary disposition under MCR 2.116(C)(8) and (10). After a hearing, the trial court denied MBM's motion for partial summary disposition on the ground that both MCL 440.3414 and MCL 440.3415 were inapplicable to this case. The trial court granted Mortgage Center's motion for summary disposition on the grounds that (1) MBM was not a holder in due course as defined in MCL 440.3302 because it did not act in a commercially reasonable manner, and (2) MBM breached the transfer warranties under MCL 440.4207 and must bear the risk of loss. MBM filed this appeal from the trial court's order denying its motion for partial summary disposition and granting Mortgage Center's motion for summary disposition.

II. ANALYSIS

Mortgage Center initially challenged this Court’s jurisdiction and alleged that the order appealed by MBM is not a final order. However, MBM timely filed its claim of appeal on July 2, 2012, within 21 days after entry of the trial court’s final order on June 13, 2012. A claim of appeal from the final order encompasses all prior non-final orders entered in the case. See *Dean v Tucker*, 182 Mich App 27, 31; 451 NW2d 571 (1990). Accordingly, this Court has jurisdiction over MBM’s appeal.

On the merits, MBM first argues that the trial court erred in granting summary disposition in favor of Mortgage Center because the issues of whether MBM was a holder in due course and whether MBM acted in a commercially reasonable manner were issues of fact to be decided by the factfinder.

This Court reviews a trial court’s decision regarding a motion for summary disposition de novo. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). “Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). The Court considers the pleadings and the other relevant record evidence in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial. *Dancey v Travelers Prop Cas Co*, 288 Mich App 1, 7; 792 NW2d 372 (2010).

Here, even if the trial court erred in determining as a matter of law that MBM did not act in a commercially reasonable manner, the trial court correctly determined that MBM was not a holder in due course because, on the basis of the undisputed facts, MBM was not a “holder” under MCL 440.1201. At the time the trial court decided the motions for summary disposition, the statute defined a “holder” as “the person in possession if the instrument is payable to the bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession.” MCL 440.1201(20) (2001).¹ Similarly, a “bearer” was defined as “the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.” MCL 440.1201(5) (2001).²

In this case, the check was not “payable to bearer” because it had not been endorsed by Mortgage Center. “If an instrument is payable to 2 or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them.” MCL 440.3110(4). To negotiate a check, each of the payees must endorse it. MCL 440.3204(1).

¹ Effective July 1, 2013, with respect to a negotiable instrument, a “holder” means “[a] person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession.” MCL 440.1201(2)(u); see 2012 PA 87, effective July 1, 2013.

² Effective July 1, 2013, a “bearer” is defined as “a person in control of a negotiable electronic document of title or a person in possession of an instrument, a negotiable tangible document of title, or a certificated security payable to bearer or indorsed in blank.” MCL 440.1201(2)(e); see 2012 PA 87, effective July 1, 2013.

An unauthorized signature is ineffective as the signature of the person whose name was signed. MCL 440.3404(1). Where it is undisputed that Mortgage Center's endorsement was invalid, the endorsement was not sufficient to allow negotiation of the check. *Pamar Enterprises, Inc v Huntington Banks of Michigan*, 228 Mich App 727, 733; 580 NW2d 11 (1998). Furthermore, when MBM cashed the check, the check was not "payable to bearer" because Mortgage Center's endorsement was invalid and, therefore, was ineffective as Mortgage Center's signature. MCL 440.3404(1). Because the check was not payable either to bearer or to an identified person in possession," MBM was not a "holder" under the former MCL 440.1201(20).

Therefore, even if the trial court erred in determining, as a matter of law, that MBM was not a holder in due course because it did not act in a commercially reasonable manner, the court's conclusion that MBM was not a holder in due course was proper where the undisputed facts show that MBM was not a "holder." This Court will not reverse a trial court's decision where the trial court reached the correct result, but for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Next, MBM argues that the trial court erred in granting summary disposition on the basis of MCL 440.4207 because the transfer warranties did not apply to Mortgage Center and are irrelevant to this case. This issue presents a question of law, which this Court reviews de novo. *Brown v Home-Owners Ins Co*, 298 Mich App 678, 690; 828 NW2d 400 (2012).

MBM correctly states that the transfer warranties did not apply to Mortgage Center and that MCL 440.4207 was not relevant to whether MBM was a holder in due course. MBM's obligations under MCL 440.4207 were relevant, however, to the trial court's determination that Mortgage Center, rather than MBM, was entitled to the proceeds from the check. MBM has not shown any error in the trial court's decision.

Therefore, we affirm the trial court's order denying MBM's motion for partial summary disposition and granting Mortgage Center's motion for summary disposition.

Affirmed.

/s/ David H. Sawyer
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly