STATE OF MICHIGAN

COURT OF APPEALS

QUAL-PROP, LLC,

Plaintiff-Appellee,

v

CHASE MANHATTAN MORTGAGE CORP,

Defendant-Appellant.

UNPUBLISHED
December 22, 2005

No. 263029
Wayne Circuit Court
LC No. 04-425449-CH

Before: Whitbeck, C.J., and Talbot and Murray, JJ.

PER CURIAM.

Defendant appeals by right from the trial court's order granting plaintiff's motion for summary disposition. We reverse and remand this case to the trial court for entry of an order granting defendant's motion for summary disposition.

This appeal concerns a dispute over a mortgage interest, ostensibly obtained by each party through two separate chains of title, in property located at 5050 Dickerson in Detroit. Rather than apply Michigan's race/notice statutes, MCL 565.25 and MCL 565.29, to resolve the dispute, the trial court granted plaintiff Qual-Prop, LLC's motion for summary disposition after concluding that an assignment of mortgage by Chase Manhattan Bank to plaintiff's predecessor in interest also served to assign defendant Chase Manhattan Mortgage Corporation's separate mortgage interest.

Defendant first asserts that plaintiff received no interest in the property. Specifically, defendant argues that before the parties' common predecessor in title, Detroit Revitalization, Inc., quit-claimed its interest to plaintiff's predecessor, it had already conveyed its interest to Mortgage Corporation of America (MCA), from which chain of title defendant ultimately received its mortgage interest. We agree.

Initially, we acknowledge that because the trial court did not apply the race/notice statutes but instead entered summary disposition in favor of plaintiff based on equity, this issue is unpreserved for review. Regardless, we review this issue because it involves the application of law, i.e., the race/notice statutes, to undisputed facts, i.e., the deeds and assignments attached to plaintiff's complaint. *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002).

A trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Furthermore, a trial court's

decision regarding an action to quiet title, which is an equitable action, is reviewed de novo, as is its decision regarding the applicability of a statute, which is a question of law. *Fowler v Doan*, 261 Mich App 595, 598; 683 NW2d 682 (2004). Summary disposition was appropriately granted if there was no genuine issue as to any material fact and the moving party was entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(5); *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

As noted by this Court in *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999):

> In an action to quiet title, the plaintiffs have the burden of proof and must make out a prima facie case of title. If the plaintiffs make out a prima facie case, the defendants then have the burden of proving superior right or title in themselves. [Citations omitted.]

Within its complaint, plaintiff alleged a series of property interest transfers to demonstrate its right to the mortgage interest in question, and appropriately attached copies of the referenced deeds and assignments. In Michigan, pursuant to MCL 565.29 and MCL 565.25, the priority of property interests generally depends on the order in which those interests are recorded. Specifically, MCL 565.29 provides in relevant part:

> *Every conveyance* of real estate within the state hereafter made, which shall not be recorded as provided in this chapter, *shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded*. The fact that such first recorded conveyance is in the form or contains the terms of a deed of quit-claim and release shall not affect the question of good faith of such subsequent purchaser, or be of itself notice to him of any unrecorded conveyance of the same real estate or any part thereof. [Emphasis added.]

A mortgage is a conveyance within the meaning of the recording acts. MCL 565.35; *Stover v Bryant & Detwiler Improvement Corp of Detroit*, 329 Mich 482, 484; 45 NW2d 364 (1951). Furthermore, recorded liens, rights, and interests in property take priority over subsequent owners and encumbrances. MCL 565.25(4).

As evidenced by the deeds and assignments attached to plaintiff's complaint, defendant received its mortgage interest in the property from an assignment executed by Prism Mortgage Company on October 18, 1999, which defendant recorded on August 22, 2001. Plaintiff received its interest in the property from a conveyance by Chayne Holding Group, LLC, executed by quit-claim deed on March 8, 2004, and recorded on March 17, 2004.

Interestingly, the parties share a predecessor in title, Detroit Revitalization, Inc., which attempted to convey its interest in the property on two separate occasions: First, Detroit Revitalization executed a quit-claim deed on November 18, 1997, to MCA, which recorded the deed on August 19, 1998. Defendant ultimately received its mortgage interest through this chain of title. Second, Detroit Revitalization executed another quit-claim deed on June 24, 1999, to 39119, LLC, which recorded the deed on December 23, 1999. Plaintiff ultimately claims an interest through this chain of title.

Pursuant to MCL 565.3, the execution of a quit-claim deed conveys all the interests in a property the grantor can lawfully convey. Because defendant's predecessor in title, MCA, recorded its deed on August 19, 1998, approximately ten months *before* Detroit Revitalization attempted to convey its interest in the property a second time, MCA obtained title to the property and, consequently, the second quit-claim deed executed by Detroit Revitalization is void because the corporation had no remaining interest in the property to convey. Therefore, plaintiff obtained no interest in the property from this second chain of title.

We likewise agree with defendant's assertion that the trial court erred in concluding that, for the purposes of Chase Manhattan Bank's attempted conveyance and assignment of interest in the property, the bank and defendant were the same.

Michigan recognizes the separateness of related corporate entities "unless doing so would subvert justice or cause a result that would be contrary to some other clearly overriding public policy." *Wells v Firestone Tire & Rubber Co*, 421 Mich 641, 650; 364 NW2d 670 (1984). In the present case, the trial court granted plaintiff summary disposition after concluding that there was only one mortgage on the property and, therefore, "Chase Manhattan Bank for purposes of this transaction [the bank's June 5, 2001 conveyance and assignment of interest in the property] was the same as Chase Manhattan Mortgage Company." However, the trial court's conclusion focused simply on whether more than one mortgage existed against the property and it ignored both the separate chains of title from which each party claims its interest and the bank's specific role in the transaction as a "warehouse bank" as noted in a May 14, 2001 bankruptcy order attached to plaintiff's complaint. With this order in mind, the bank's June 5, 2001 conveyance via quit-claim deed and assignment of mortgage interests on behalf of itself and *as agent for 39119, LLC*, evidences the bank's distinct role regarding the property, which was separate from the mortgage interest obtained by defendant from Prism Mortgage Company. Furthermore, plaintiff made no allegation that the corporate forms of the bank and defendant were created to subvert justice. Therefore, the trial court erred by simply concluding that the two entities were the same for purposes of the bank's conveyance and assignment of interests.

We reject plaintiff's argument that Chase Manhattan Bank was acting as defendant's ostensible/apparent agent during the June 5, 2001 conveyance and assignment. As noted by this Court in *Chapa v St Mary's Hospital of Saginaw*, 192 Mich App 29, 33-34; 480 NW2d 590 (1991):

> [T]he following three elements . . . are necessary to establish the creation of an ostensible agency: (1) the person dealing with the agent must do so with belief in the agent's authority and this belief must be a reasonable one, (2) the belief must be generated by some act or neglect on the part of the principal sought to be charged, and (3) the person relying on the agent's authority must not be guilty of negligence. [Citations omitted.]

In the present case, we find no merit to plaintiff's argument that its belief that the bank was defendant's agent was reasonable because "the names appeared to be the same and [plaintiff] was never informed that the two agencies were in fact different." The bank's corporate name is Chase Manhattan *Bank* while defendant's corporate name is Chase Manhattan *Mortgage Company.* The two entities' names do not "appear to be the same." Indeed, their

differences should have informed plaintiff that the two corporations, although related, are separate.

Moreover, plaintiff's belief must be based on an "act or neglect" by defendant, yet plaintiff submits no evidence that defendant did anything to confuse or otherwise create plaintiff's belief that the bank was acting as defendant's agent. Defendant simply recorded a mortgage interest it was assigned by Prism Mortgage Company. In fact, plaintiff offers no evidence that defendant even knew about the bank's June 2001 execution of a quit-claim deed and assignment of mortgage and, without such knowledge, defendant would have no reason to specifically inform plaintiff that the bank was not its agent.

Finally, for similar reasons, plaintiff's belief was based on its own negligence in failing to properly investigate the property's chain of title. The names of defendant and Chase Manhattan Bank, while similar, are not the same and the chain of title clearly shows that plaintiff's predecessor in title, Detroit Revitalization, had already conveyed any interest it held in the property to defendant's predecessor in interest. Therefore, plaintiff had notice of defendant's interest and of a possible defect in its own title yet apparently made no further inquiries. Instead plaintiff merely assumed that Chase Manhattan Bank and Chase Manhattan Mortgage Corporation were one and the same. Thus, plaintiff's belief was not reasonable, and plaintiff has failed to prove the existence of an ostensible agency between Chase Manhattan Bank and defendant. The trial court's conclusion to the contrary was incorrect.

Furthermore, because defendant holds a superior mortgage interest in the property and because plaintiff has failed to submit any evidence that Chase Manhattan Bank was acting as defendant's agent when it attempted to convey and assign interests in the property on behalf of 39119, LLC, defendant is entitled to summary disposition because no genuine issue of material fact remains and defendant is entitled to judgment as a matter of law. MCR 2.116(C)(10).

Reversed and remanded to the trial court for entry of an order granting defendant's motion for summary disposition. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Michael J. Talbot
/s/ Christopher M. Murray