

STATE OF MICHIGAN
COURT OF APPEALS

ISABELLE MURRAY,

Plaintiff-Appellant,

v

CHANTELL D. MOULTRIE and SECURITY
MORTGAGE CORPORATION, d/b/a BARRON
& ASSOCIATES,

Defendants,

and

PROVIDENT BANK, a/k/a PROVIDENT
CONSUMER FINANCIAL SERVICES,

Defendant-Appellee.

UNPUBLISHED

July 25, 2006

No. 259410

Wayne Circuit Court

LC No. 03-316508-CH

Before: Jansen, P.J., and Murphy and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right an order of the circuit court granting defendant Provident Bank's motion for summary disposition under MCR 2.116(C)(10), quieting title in her name but subject to defendant's mortgage lien interest. At issue is whether defendant's mortgage lien interest was valid and enforceable, which also bears on whether subsequent foreclosure proceedings that took place were legally proper. The trial court found that plaintiff's title was subject to defendant's mortgage. Because we conclude that defendant's interest is null and void under Michigan law, even when contemplating equitable principles, we reverse the decision of the trial court and remand for entry of judgment in favor of plaintiff.

Appellate review of a motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In reviewing the grant of summary disposition under MCR 2.116(C)(10), we consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the party opposing the motion, granting the benefit of any reasonable doubt to the opposing party. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993), citing *Stevens v McLouth Steel*, 433 Mich 365, 370; 446 NW2d 95 (1989).

Plaintiff acquired title to the property at issue in this case by quitclaim deed from her uncle, who is not a party to this suit. Both parties agree that plaintiff's uncle deeded title to her in an attempt to avoid the property from being awarded to his former wife in divorce proceedings. As it happens, the property was nevertheless considered by the divorce court and was awarded to plaintiff's uncle.

Plaintiff's cousin, the daughter of the uncle referenced above, who had been living at the property for several years at the time this action was filed, fraudulently executed a quitclaim deed on the property in July 1997, transferring it from plaintiff to her cousin. Subsequently, plaintiff's cousin was granted several mortgages on the property, all but the last of which were ultimately discharged. The last mortgage was given to Security Mortgage Corporation and then assigned to defendant Provident Bank. Plaintiff alleged that the July 1997 deed was fraudulent, as she was living and working in South Carolina when it was executed. The documentary evidence reveals that there is no genuine issue of fact that the deed was forged. Plaintiff testified in her deposition that she did not execute the deed, and she provided the circuit court with employment work records in support of her assertion that she was out of state when the July 1997 deed was executed.

Although defendant was apparently an innocent party who took without notice, Michigan precedent is that a lack of notice does not protect a party who took under a forged deed. *Felcher v Dutton*, 265 Mich 231, 233-234; 251 NW 332 (1933); *VanderWall v Midkiff*, 166 Mich App 668, 685; 421 NW2d 263 (1988). As our Supreme Court held in *Horvath v Nat'l Mortgage Co*, 238 Mich 354, 360; 213 NW 202 (1927), "There can be no such thing as a *bona fide* holder under a forgery, whose good faith gives him any rights against the party whose name has been forged or his heirs." (Citations omitted.) "Where a deed is forged, those innocently acquiring interests under the forged deed are in no better position as to title than if they had purchased with notice." *VanderWall*, *supra* at 685.

Plaintiff should not be characterized as coming to this transaction with unclean hands to the extent that she should be burdened by the mortgage. "A suit to quiet title or remove a cloud on a title is one in equity. . . . A party seeking the aid of equity must come in with clean hands." *McFerren v B & B Investment Group*, 253 Mich App 517, 522; 655 NW2d 779 (2002). However, "[t]he misconduct which will move a court of equity to deny relief must bear a more or less direct relation to the transaction concerning which complaint is made. Relief is not denied merely because of the general morals, character or conduct of the party seeking relief." *McKeighan v Citizens Commercial & Savings Bank of Flint*, 302 Mich 666, 671; 5 NW2d 524 (1942). In the case at bar, plaintiff's complicity in the attempt to defraud her uncle's wife is not inextricably linked to the alleged forged deed in issue. Further, given the divorce court's award of the property to plaintiff's uncle, plaintiff's actions have not caused a cloud on the title. Moreover, there is no evidence that plaintiff or her uncle shared in the loan proceeds relative to the mortgage or even knew how the proceeds were used. Additionally, plaintiff and her uncle testified that they did not have any knowledge of the mortgages. Plaintiff indicated that it had been about ten years or more since she had spoken to her cousin. There is no evidence whatsoever suggesting that plaintiff, her uncle, and her cousin, were acting in collusion with respect to the loans and mortgages.

We find, as a matter of law, that plaintiff holds title to the property unburdened by defendant's mortgage interest, which we hold is invalid and void. Accordingly, all foreclosure proceedings are vacated.

Reversed and remanded for entry of judgment in favor of plaintiff. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ William B. Murphy

/s/ Karen M. Fort Hood