

STATE OF MICHIGAN
COURT OF APPEALS

PATRIC GUZIKOWSKI,

Plaintiff,

and

WHITE RIVER RESOURCES GROUP, INC.,

Plaintiff-Appellee,

v

MICHIGAN PROPERTIES, INC., JAMES D.
LEIMBACH, SHELDON CHRISTENSEN, and
CAROLE K. CHRISTENSEN,

Defendants,

and

THOMAS W. LANE,

Defendant-Cross-Defendant,

and

SOUHEGAN RIVER ASSOCIATES,

Defendant-Cross-Plaintiff,

and

RANDALL DECHER and CONNIE DECHER,

Defendants/Cross-Defendants-
Appellants,

and

UNPUBLISHED

May17, 2007

No. 265010

Manistee Circuit Court

LC No. 98-008907-CH

CLARA J. LANE, deceased,

Cross-Defendant.

THOMAS W. LANE,

Plaintiff/Third-Party-Defendant-
Appellee,

v

SOUHEGAN RIVER ASSOCIATES,

Defendant-Appellee,

and

JAMES D. LEIMBACH,

Defendant,

and

RANDALL DECHER and CONNIE DECHER,

Third-Party-Plaintiffs-Appellants.

No. 265011
Manistee Circuit Court
LC No. 98-008922-CH

RANDALL DECHER and CONNIE DECHER,

Plaintiffs-Appellants,

v

THOMAS W. LANE and SOUHEGAN RIVER
ASSOCIATES,

Defendants-Appellees.

No. 265012
Manistee Circuit Court
LC No. 98-008973-CH

Before: Schuette, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

In these consolidated appeals, Randall and Connie Decher appeal as of right from the order quieting title in favor of White River Resources Group, Inc. (WRRG) concerning certain parcels of land known as parcels B and C. We affirm.

I. FACTS

In a prior appeal, this Court remanded for the trial court to make certain factual determinations before deciding whether the Dechers, as offerors, had a valid claim under the purchase agreement concerning parcels B and C with Thomas and Clara Lane, the offerees. *White River Dev Group, LCC, [sic] v Souhegan River Assoc*, unpublished opinion per curiam of the Court of Appeals, issued May 29, 2003 (Docket No. 234972), slip op p 3. At that time, the Lanes had transferred their interest in parcels B and C, and the panel, along with the parties actively involved in the litigation, were apparently unaware that the Lanes had filed for and been discharged in Chapter 7 bankruptcy. On remand, the trial court granted WRRG summary disposition, concluding that the Dechers' potential claim could not be pursued against WRRG, which had acquired an interest in parcels B and C during the course of this litigation, because the Dechers did not have a viable theory to hold WRRG liable for the breach of the purchase agreement between themselves and the Lanes. The Dechers now appeal.

II. SUMMARY DISPOSITION

The Dechers argue that the trial court erred in granting summary disposition under MCR 2.116(C)(10) in favor of WRRG. We disagree.

A. Standard of Review

A trial court's decision on a motion for summary disposition is reviewed de novo. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition should be granted under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). A genuine issue of material fact exists when, giving the benefit of reasonable doubt to the opposing party, the record leaves open an issue upon which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). When deciding such a motion, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley, supra* at 278.

B. Analysis

While acknowledging that they are unable to pursue their potential claim against the Lanes because that claim was discharged in bankruptcy, the Dechers first rely on bankruptcy statute 11 USC 524(e), which provides as follows: "Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." A "debt" is defined as the "liability on a claim." 11 USC 101(12). Accordingly, the Dechers' reliance on 11 USC 524(e) is misplaced because it had yet to be determined whether their claim against the Lanes was viable, i.e.

whether the Lanes were liable. Therefore, because § 524(e) plainly applies to the discharge of a debt, that section is inapplicable because there was no debt as defined under the bankruptcy statute, 11 USC 101(12).

Nevertheless, the Dechers would be able to enforce their claim for specific performance against WRRG if (1) the trial court concluded that they had a valid claim against the Lanes under this Court's order for remand and (2) before discharge, WRRG became liable for the purchase agreement. Even assuming for the sake of argument that the first requirement would be met, the Dechers have failed to show that they can enforce the purchase agreement against WRRG. The Dechers' theory for holding WRRG liable is based on their argument that WRRG could not have been a good faith purchaser of the property because it undoubtedly had notice of the Dechers' claim concerning the litigation involving the Dechers and the Lanes. WRRG does not deny that it had notice of that claim but argues that mere notice does not amount to it becoming a responsible party under the agreement. We agree.

Specifically, the Dechers cite to a number of decisions involving a buyer attempting to specifically perform a contract for the sale of land where the land has subsequently been conveyed to a third party who had or allegedly had notice of the contract but was not a party to that contract. See, e.g., *Soloman v Western Hills Dev Co (After Remand)*, 110 Mich App 257, 259-261, 266; 312 NW2d 428 (1981); *Port Investment Co v Anderson*, 23 Mich App 103, 104; 178 NW2d 157 (1970); see also *Oakland Hills Dev Corp v Lueders Drainage Dist*, 212 Mich App 284, 287-289, 296-297; 537 NW2d 258 (1995) (involving a right to redemption where this Court concluded that the subsequent purchaser of the property was not a good faith purchaser because it had notice of that right to redeem). Those decisions are clearly distinguishable because the Dechers' underlying contractual right has been discharged in bankruptcy. Notice alone of an interest that has been discharged is insufficient to hold a person or entity liable for an interest that no longer exists. To that end, the Dechers have no rights to pursue unless they can show that WRRG became independently responsible for the underlying purchase agreement before that right was discharged on February 23, 2003.

The Dechers also rely on *Commer v Potter*, 232 Mich 263, 265; 205 NW 172 (1925), which involved a sale by land contract between the plaintiffs and a corporation. While the plaintiffs were making payments on their land contract, a mortgage on the property was foreclosed upon, and the president of the corporation, individually, obtained an option to purchase the property from the foreclosing mortgagees. *Id.* at 265-266. After exercising his option to purchase the property, the president sold the property the following day for more than double what he paid for it to a third party who lacked notice of the plaintiffs' interests in the land contract. *Id.* at 266, 270. Meanwhile, the corporation became defunct, and the plaintiffs continued to make payments until their contract was satisfied without notice as to the president's dealings and without notice of the corporation's status. *Id.* at 266-267. The Court found that the former corporate president was liable for damages and that the plaintiffs could have enforced their claim for specific performance but for the third party's lack of notice of plaintiffs' interest. *Id.* at 270. Relying in part on *Lovejoy v Potter*, 60 Mich 95; 26 NW 844 (1886), the Court reasoned that "[t]he vendor in a land contract holds the legal title, but he holds it in trust for the vendee. One who purchases the land from the vendor with knowledge of the vendee's rights and thereafter accepts payments from the vendee, assumes the contract and may be required to specifically perform it." *Commer, supra* at 269-270.

Lovejoy involved a plaintiff purchasing property from a corporation by land contract. *Lovejoy, supra* at 98-99. The corporation later assigned its interest in the land contract to the defendant. *Id.* at 99. Later, the plaintiff tendered final payment of the land contract to the defendant, but the defendant refused to convey a warranty deed, electing to tender a quitclaim deed containing covenants pertaining only to the defendant. *Id.* The Court concluded that the plaintiff was entitled to specific performance of the deed requested because the defendant purchased the premises subject to the land contract, thereby assuming the corporation's interest in the contract. *Id.* at 100-101.

Here, there is no evidence that any person who or entity that had purchased or was assigned an interest in parcels B and C subsequent to the purchase agreement had either assumed the purchase agreement or was assigned the Lanes' interest in that agreement. Additionally, while the Dechers assert that the entities who currently or at one time had an interest in parcels B and C are run by the same individuals, they have not submitted any documentation to support their allegations and do not expressly allege any fraud on behalf of those individuals. As a result, regardless of whether any of the persons or entities had notice of the Dechers' potential interest in parcels B and C when they retained an interest in those parcels, there is no evidence that those persons or entities should be responsible for a claim under the purchase agreement that has since been discharged in bankruptcy.

Affirmed.

/s/ Bill Schuette
/s/ Peter D. O'Connell
/s/ Alton T. Davis