

STATE OF MICHIGAN
COURT OF APPEALS

LARRY R. MULLINS,

Plaintiff-Appellant,

v

DELTA OIL COMPANY, INC., FORCE
ANTRIM DEVELOPMENT, INC., WHITING
PETROLEUM CORPORATION, ROEMER-
SWANSON ENERGY CORPORATION,
and TITUS J. HAGER, Trustee of the Titus J.
Hager Trust,

Defendants-Appellees.

UNPUBLISHED

February 8, 2005

No. 247463

Montmorency Circuit Court

LC No. 00-003722-CH

Before: Murphy, P.J., and White and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). This action involved the question whether the filing and recording, with the Montmorency Register of Deeds Office, of a "unitization agreement" concerning natural gas extraction constitutes statutory slander of title, where the real property encompassed by and legally described in the agreement includes, in part, plaintiff's property, but where plaintiff was not a signatory to the agreement, did not ratify the agreement, nor had ever executed a lease with respect to the removal of minerals. The trial court found that the elements of statutory slander of title were lacking after consideration of the documentary evidence and the arguments presented by the parties. Plaintiff argues that there was sufficient evidence submitted to give rise to a genuine issue of material fact in regard to the two counts of statutory slander alleged in his complaint and that the trial court incorrectly recited the elements of slander of title. Defendants maintain that this case is simple in that the clear terms of the unitization agreement provide that it is only effective as to mineral interest owners who agree to be bound by it through ratification of the agreement and the execution of a mineral lease. Accordingly, the document cannot be said to have slandered or encumbered plaintiff's title to the relevant property. We affirm.

Plaintiff relies on MCL 565.108 and MCL 565.25(5), which incorporate MCL 600.2907a. MCL 565.108 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.

MCL 565.25(5) provides:

A person who is not exempt under subsection (3)¹ who encumbers property through the recording of a document listed under subsection (2)² without lawful cause with the intent to harass or intimidate any person is liable for the penalties set forth in [MCL 600.2907a].

MCL 600.2907a provides in relevant part:

(1) A person who violates [MCL 565.25] by encumbering property through the recording of a document without lawful cause with the intent to harass or intimidate any person is liable to the owner of the property encumbered for all of the following:

(a) All of the costs incurred in bringing an action under [MCL 565.25], including actual attorney fees.

(b) All damages the owner of the property may have sustained as a result of the filing of the encumbrance.

(c) Exemplary damages.

In *B & B Investment Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998), this Court, discussing MCL 565.108 and the interplay between statutory slander of title and common-law slander of title, stated:

In Michigan, slander of title claims has both a common-law and statutory basis. Slander of title has been recognized at common law since at least 1900 as a remedy for malicious publication of false statements that disparage a plaintiff's right in property. See 2 Cameron, *Michigan Real Property Law* (2d ed), Slander of Title, § 30.18, pp 1461-1462, and cases cited therein, including *Harrison v*

¹ This subsection makes exceptions for tax liens, encumbrance instruments authorized by state or federal statute, and consensual agreements to encumber real property.

² This subsection speaks of "a levy, attachment, lien, lis pendens, sheriff's certificate, marshal's certificate, or other instrument of encumbrance[.]"

Howe, 109 Mich 476; 67 NW 527 (1896), and *Michigan Nat'l Bank-Oakland v Wheeling*, 165 Mich App 738; 419 NW2d 746 (1988).

To establish slander of title at common law, 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. See *Sullivan v Thomas Organization, PC*, 88 Mich App 77, 82; 276 NW2d 522 (1979); *Michigan Real Property Law, supra* at 1461; 50 Am Jur 2d, Libel and Slander, § 554, p 847. . . .

The same three elements are required in slander of title actions brought under MCL 565.108; MSA 26.1278. *GKC Michigan Theatres, Inc v Grand Mall*, 222 Mich App 294, 301; 564 NW2d 117 (1997). But see *Stanton v Dachille*, 186 Mich App 247, 262; 463 NW2d 479 (1990)(stating that "the elements of slander of title are falsity of statement and malice").

Therefore, MCL 565.108 requires proof of malice, and MCL 565.25(5), by its very language, requires an intent to harass or intimidate. We find, on the record before us, a complete failure on plaintiff's part to establish such elements. Rather, the record reflects that defendants, through oversight and possible confusion, believed that the property was subject to a mineral lease and that, as soon as the mistake was discovered, attempted to negotiate a lease with plaintiff, who did not initially request to have his property, as legally described, removed from the agreement. Defendants subsequently offered to have plaintiff's property removed from the legal description contained in the unitization agreement. "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, supra* at 262 (citation omitted). We agree with the trial court's thoughts on the issues of malice, intimidation, and harassment and the lack thereof.

Accordingly, both of plaintiff's statutory claims fail, and it is unnecessary to reach the issue whether the unitization agreement created a cloud on the title, slandered the title, or encumbered the property.³

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Kirsten Frank Kelly

³ With respect to plaintiff's quiet-title count, the court ordered that plaintiff's property be removed from the legal description contained in the unitization agreement as requested by plaintiff in the complaint. The quiet-title claim does not give rise to any appellate issues that require resolution.