STATE OF MICHIGAN

COURT OF APPEALS

SHERWOOD DEVELOPMENT, INC.,

Plaintiff-Appellee/Cross-Appellant,

v

LARRY D. BARNETT and BARNETT & TRAVER, P.C.,

Defendants-Appellants/Cross-Appellees,

and

SCOTT CONSTABLE,

Defendant.

UNPUBLISHED
March 20, 2008

No. 275594
Oakland Circuit Court
LC No. 2005-069630-CK

Before: Servitto, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this action involving the validity of an attorney's charging lien, defendants Larry Barnett and his law firm, Barnett & Traver, P.C.,[1] appeal as of right, challenging the trial court's order granting summary disposition to plaintiff Sherwood Development, Inc. ("plaintiff"), on its claim to quiet title. Plaintiff cross appeals the trial court's dismissal of its additional claims for common-law and statutory slander of title. Because the trial court did not err in determining that defendants' liens were not valid and did not err in dismissing plaintiff's additional claims for slander of title, we affirm.

Scott Constable entered into retainer agreements with defendants for legal representation in two different legal matters. Each agreement contained a clause that provided:

[1] Because defendant Scott Constable is not a party to this appeal, the term "defendants" is used to refer only to defendants Larry Barnett and Barnett & Traver, P.C.

> Client further agrees that Attorney shall have any [sic] Attorney's Lien on Client's real and personal property should payment of attorney fees and costs not be promptly paid to attorney upon entry of the Judgment in this Case.

After Constable failed to pay defendants' legal fees, defendants filed liens against real property owned by plaintiff Sherwood Development, Inc., a company that was half-owned by Constable. Plaintiff subsequently filed this action. The trial court determined that the liens were not enforceable against plaintiff and, therefore, granted plaintiff's motion for summary disposition of its claim to quiet title, thereby discharging the liens. The trial court also determined, however, that there was no evidence that defendants acted with malice in filing the liens and, therefore, dismissed plaintiff's additional claims for common-law and statutory slander of title.

On appeal, defendants argue that the trial court erred in determining that their liens were not valid. We disagree.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion under MCR 2.116(C)(10), the court must examine the documentary evidence presented below and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 361-362; 547 NW2d 314 (1996); see also *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455 and n 2; 597 NW2d 28 (1999). If the nonmoving party fails to establish that a material fact is at issue, the motion is properly granted. *Quinto*, *supra* at 363.

As this Court observed in *George v Sandor M Gelman, PC*, 201 Mich App 474, 476; 506 NW2d 583 (1993),

> [a]n attorneys' lien can be one of two kinds: (1) a general, retaining, or possessory lien, or (2) a special, particular, or charging lien. A general or retaining lien is the right to retain possession of all documents, money, or other property of the client until the fee for services is paid. The special or charging lien is an equitable right to have the fees and costs due for services secured out of the judgment or recovery in a particular suit. The attorneys' charging lien creates a lien on a judgment, settlement, or other money recovered as a result of the attorney's services. [Citations omitted.]

This case involves an attorneys' charging lien. In *George*, the Court "conclude[d] that an attorneys' charging lien for fees may not be imposed upon the real estate of a client, even if the attorney has successfully prosecuted a suit to establish a client's title or recover title or possession for the client, unless (1) *the parties have an express agreement providing for a lien*, (2) the attorney obtains a judgment for the fees and follows the proper procedure for enforcing a judgment, or (3) special equitable circumstances exist to warrant imposition of a lien." *Id*. at 478 (emphasis added).

Defendants concede that their liens were filed against property that was not the product of any litigation involving plaintiff or Constable. Defendants also concede that the attorney fees at issue arose from legal work performed for Constable and his wife, and not from any legal work that defendants may have performed for plaintiff. Although defendants argue that they had a

right to impose the liens pursuant to the retainer agreements, those agreements only gave defendants the right to place a lien "on Client's real and personal property." Defendant's client was Constable, not plaintiff. The agreements did not grant defendants the right to place a lien on plaintiff's property.

Furthermore, defendants provide no support for their argument that a creditor is entitled to place a lien on property owned by a corporation that is half owned by the debtor—absent an agreement *with the corporation*. Indeed, it is well settled that a corporation, such as plaintiff, is a separate legal entity from its shareholders. See *Bourne v Muskegon Circuit Judge*, 327 Mich 175, 191; 41 NW2d 515 (1950).

Defendants' attacks on the June 2005 stock purchase agreement between plaintiff and Constable, and its argument that the attorney fee lien was properly secured by a lien on Constable's real estate before Constable and his wife deeded the real property to plaintiff, are all unavailing.

The quitclaim deeds executed in June 2005, like the unrecorded deeds executed in March 2005, transferred only whatever interest Constable (and his wife) still had in the property, if any. See *Richards v Tibaldi*, 272 Mich App 522, 540-541; 726 NW2d 770 (2006). The evidence showed that all lots had been titled in plaintiff's name since February 2002, before the retainer agreements were executed. We note that the latter deeds indicate that they are exempt from transfer tax under MCL 207.505(l) and MCL 207.526(n), which exempt instruments intended merely to confirm title already vested in a grantee.

We also reject defendants' argument that plaintiff was never duly authorized to own property. Plaintiff's articles of incorporation authorize plaintiff to engage in any activity permitted by the Business Corporation Act ("BCA"), MCL 450.1101 *et seq*. Section 261 of the BCA, MCL 450.1261(f) and (g), specifically provides that a corporation may purchase, own, and sell real estate. Additionally, MCL 450.1271 provides that "[a]n act of a corporation and a transfer of real or personal property to or by a corporation, otherwise lawful, is not invalid because the corporation was without capacity or power to do the act or make or receive the transfer."

Accordingly, the trial court did not err in determining that defendants did not have a valid lien against plaintiff's property. Thus, the court properly granted plaintiff's motion for summary disposition on its claim to quiet title, thereby discharging the lien.

On cross appeal, plaintiff argues that the trial court erred in dismissing its additional claims for slander of title. We disagree.

Initially, we find no merit to plaintiff's argument that this issue was not properly before the trial court. Plaintiff originally asked for summary disposition on all of its claims, thereby raising the issue. Further, plaintiff later moved for additional attorney fees and costs, arguing that it was entitled to this relief as a remedy for its slander of title claims. Defendants responded to this motion by arguing that there was no evidence of malice to support the claims. Although

defendants were not the moving parties, MCR 2.116(I)(2) permitted the court to enter judgment in favor of defendants if the court determined that defendants, rather than plaintiff, were entitled to judgment.

As noted by the parties, "slander of title claims have both a common-law and statutory basis." *B & B Investment Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998). "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." *Id*. "Pecuniary or special damages must be shown in order to prevail on the claim." *Id*. Special damages include litigation costs. *Id*. at 9.

The same three elements are required in slander of title actions brought under § 8 of the marketable record title act, MCL 565.108. *B & B Investment Group*, *supra* at 8. However, § 8 also requires a showing that a lien was filed for the sole purpose of slandering title to land.

In the context of a common-law slander of title claim, malice in fact, or express malice, "implies a desire or intention to injure." *Glieberman v Fine*, 248 Mich 8, 12; 226 NW 669 (1929). "Malice in law, or implied malice, means a wrongful act, done intentionally without just cause or excuse." *Id*. "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 v Dachille*, 186 Mich App 247, 262; 463 NW2d 479 (1990); see also *Sullivan v Thomas Org, PC*, 88 Mich App 77, 86; 276 NW2d 522 (1979). In *Harrison v Howe*, 109 Mich 476, 479; 67 NW 527 (1896), our Supreme Court stated that a plaintiff

> must also attempt to show that the defendant could not honestly have believed in the existence of the right he claimed, or at least that he had no reasonable or probable cause for so believing. If there appear no reasonable or probable cause for his claim of title, still the jury are not bound to find malice. The defendant may have acted stupidly, yet from an innocent motive.

Plaintiff correctly observes that malice is generally a question for the trier of fact. *Id.* at 480. If there is no material factual dispute for trial, however, summary disposition properly may be granted under MCR 2.116(C)(10) or (I)(2). *Quinto*, *supra* at 361-362. Plaintiff's reliance on *Brand v Hinchman*, 68 Mich 590, 601; 36 NW 664 (1888), to argue that this Court should examine the malice issue by determining what "careful and prudent business men would have done under like circumstances" is misplaced. *Brand* did not involve a slander of title claim and plaintiff's attempt to apply it to such a claim is inconsistent with *Glieberman*, *supra*.

Although we agree with plaintiff that the filing of the liens was a wrongful act, there was no evidence showing that defendants acted with an intent other than to collect their legal fees. Each lien was for the total amount owed by Constable. Further, defendants did not act without justification or excuse. Rather, Constable's ownership in plaintiff, and the discussions between Constable and Barnett, gave defendants reasonable or probable cause to believe that they could proceed against plaintiff's real estate. The trial court correctly determined that there was no

genuine issue of fact for trial concerning whether defendants acted with malice. Thus, plaintiff's slander of title claims were properly dismissed.

Affirmed.

/s/ Deborah A. Servitto
/s/ Joel P. Hoekstra
/s/ Jane E. Markey