STATE OF MICHIGAN

COURT OF APPEALS

HARRY B. BURKE and MARGARET ANNE BURKE, Plaintiffs-Appellants,	UNPUBLISHED May 29, 2008
V	No. 277808 Oakland Circuit Court LC No. 2006-075545-CK
RAMBLEWOOD MANOR HOMES ASS'N, ELEANOR BRAININ, DAVID BRAININ, and LAUREL HOFFMAN, Trustees of the GERTRUDE BRAININ TRUST, and TRANSNATION TITLE INSURANCE COMPANY, Defendants-Appellants.	

Before: Servitto, P.J., and Cavanagh and Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right from orders granting summary disposition in defendants' favor. We affirm.

The principal facts in this action to quiet title are not in dispute. Rather, it is the legal conclusion to be drawn from the facts that is the subject of debate. Plaintiffs purchased a condominium ("Unit 48"), located in the Ramblewood Manor Homes condominium project, from the Gertrude Brainin Trust ("the Trust") in October 2003. Unit 48 was sold pursuant to a warranty deed, which described the property as follows:

> Unit 48, Building 7, RAMBLEWOOD MANOR HOMES CONDOMINIUM, according to the Superceding Consolidated Master Deed recorded in Liber 13089, pages 509 through 569, both inclusive, as amended, Oakland County Records and designated as Oakland County Condominium Subdivision Plan No. 488, together with rights in general common elements and limited common elements as set forth in the above described Master Deed, and as described in ACT 59 of the Public Acts of 1978, as amended.

The "superceding consolidated master deed" referenced in the warranty deed is actually a "consolidating master deed" regarding Ramblewood Manor Homes condominium project that

was recorded in 1992. The consolidating master deed apparently contains an architectural drawing showing that Unit 48 has a carport appurtenant to it.

Plaintiffs initiated this action against defendants when they learned that the carport was not included in the sale of the condominium. According to plaintiffs, the warranty deed conveying the condominium and the superseding consolidated master deed governing the property provide that the carport is subject to the exclusive use and enjoyment of Unit 48. Defendants Ramblewood and the Trust, however, responded that an amendment and reassignment of the carport was recorded during the initial development of the condominium units and that such amendment and reassignment clearly establish that the carport at issue did not and does not belong to plaintiffs' unit. On these defendants' motions for summary disposition, the trial court agreed, and granted summary disposition in defendants' favors.

The trial court also granted summary disposition in defendant Transnation's favor. Transnation, the title company issuing a title insurance policy to plaintiffs concerning their purchase of Unit 48, moved for summary disposition on the basis that its policy of title insurance excepted from coverage claims concerning common elements, such as the carport at issue. Transnation also asserted that any claim of alleged negligent search of public records against it must fail, as that theory is specifically precluded as matter of law. The trial court granted Transnation's motion, without specifying on which of Transnation's arguments it was basing its decision.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood,* 461 Mich 109, 118; 597 NW2d 817 (1999). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the pleadings alone. *Johnson-McIntosh v Detroit,* 266 Mich App 318, 322; 701 NW2d 179 (2005). A motion under subrule (C)(8) is properly granted if no factual development could justify recovery under the plaintiff's claim. *Id.* Summary disposition is appropriate under MCR 2.116(C)(10) if no material factual dispute exists and the moving party is entitled to judgment as a matter of law. *Rice v Auto Club Ins Ass'n,* 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion brought under subrule (C)(10), a court considers all the evidence, affidavits, pleadings, and admissions in the light most favorable to the nonmoving party. *Id.* at 30-31. An action to quiet title is equitable nature and is also subject to de novo review on appeal, but we review the trial court's factual findings for clear error. *Richards v Tibaldi,* 272 Mich App 522, 528-529; 726 NW2d 770 (2006); *McFerren v B & B Inv Group*, 253 Mich App 517, 522; 655 NW2d 779 (2002); see also MCL 600.2932(5).

Plaintiffs' claims on appeal hinge upon whether the warranty deed conveying Unit 48 to them, through reference to the consolidating master deed governing Ramblewood Manor Homes, served to convey ownership of the carport at issue to them. There is no dispute that the carport at issue was originally assigned to Unit 48 and that such assignment appears in an architectural

drawing attached to the original master deed. The assignment of carports and other elements described as "limited common elements"[1] is not necessarily, however, static.

Article XII of the original master deed for the Ramblewood Manor Homes addresses changes to limited common elements and provides, at section 1:

> No Unit dimension may be modified in any material way without the consent of the Co-Owner or mortgagee of such Unit nor may the nature or extent of Limited Common Elements or the responsibility for maintenance, repair or replacement thereof be modified in any material way without the written consent of the Co-owner and mortgagee of any Unit to which the same are appurtenant.
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> The Michigan Condominium Act, at MCL 559.139(2), similarly provides:
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> (2) Unless expressly prohibited by the condominium documents, a limited common element may be reassigned upon written application of the co-owners concerned to the principal officer of the association of co-owners or to other persons as the condominium documents may specify. The officer or persons to whom the application is duly made shall promptly prepare and execute an amendment to the master deed reassigning all rights and obligations with respect to the limited common element involved. The amendment shall be delivered to the co-owners of the condominium units concerned upon payment by them of all reasonable costs for the preparation and recording of the amendment to the master deed.

MCL 559.139(1) further provides:

> Assignments and reassignments of limited common elements shall be reflected by the original master deed or an amendment to the master deed. A limited common element shall not be assigned or reassigned except in accordance with this act and the condominium documents.

MCL 559.173 requires that a master deed and amendments to the master deed be recorded, and MCL 559.191 provides that an amendment to the master deed shall not be effective until the amendment is recorded.

An "Amendment and Reassignment of Limited Common Element Carport" concerning the carport at issue was recorded with the Oakland County Register of Deeds on November 3, 1988. The amendment states that the developer of the condominium project is the owner of Units 46 and 48. The amendment further states that the developer/owner and the Ramblewood Manor Homes Association "reassign Carport No. C-48, formerly assigned to Unit No. 48 to Unit No. 46." The reassignment of the carport having been agreed to between the co-owners of the

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[1] Carports are included in the definition of Limited Common Elements in Article VI, Section 2(e) of the consolidating master deed.

concerned units and the amendment and reassignment of the carport having been duly recorded with the Oakland County Register of Deeds, the reassignment complied with the condominium documents and the Michigan Condominium Act.

According to plaintiffs, however, because their warranty deed transfers ownership of Unit 48 "according to the superceding consolidated master deed" and such deed supersedes the previously recorded master deed and all amendments, the amendment and reassignment of the carport to Unit 46 is no longer valid. Plaintiffs thus claim that the warranty deed vested title in the carport to them, as owners of Unit 48. We disagree.

As pointed out by plaintiffs, a consolidating master deed concerning Ramblewood Manor Homes was recorded in 1992. The consolidating master deed indicates that the original master deed, by-laws and condominium subdivision plan are incorporated by reference and made part of the same. Of importance, the condominium subdivision plan contains the architectural drawing showing a carport being assigned to Unit 48. The consolidating master deed also references certain amendments that were made to the master deed and recorded (though no mention is made of the carport amendment and reassignment), and, at Article III, section 9, provides:

> This Consolidating Master Deed, when recorded, in the office of the Oakland County Register of Deeds, supercedes the previously recorded Master Deed for the Condominium and all amendments thereto.

However, the consolidating master deed also provides, at Article IV, Section 2:

> Limited Common Elements. Limited Common Elements shall be subject to the exclusive use and enjoyment of the owner of the Unit to which the Limited Common Elements are appurtenant. The Limited Common Elements are:
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> (e) Carports. Each individual carport in the Project is restricted in use to the Co-Owner of the Unit to which it is assigned at the time if the initial conveyance of the Unit.

The developer of the condominium project, Ramblewood Manor Homes Limited Partnership, originally owned Unit 48 as part of the overall condominium project. Unit 48 was conveyed from the developer to Gertrude Brainin through a warranty deed recorded on November 28, 1988. The warranty deed conveyed title to Unit 48 and specifically stated on the face of the deed, "No carport assigned with this Unit." The amendment and reassignment of the carport was recorded on November 3, 1988- prior to Ms. Brainin's purchase of the Unit—and, as previously stated, complied with both the condominium documents and the Condominium Act. At the time of the initial ("first", see The American Heritage Dictionary of the English Language (2006)) conveyance of Unit 48, then, the carport was not assigned to Unit 48. Consistent with the language of the consolidating master deed, the carport at issue is restricted to the use of the co-owner of the unit to which it was assigned at the initial conveyance of the unit. As Unit 48 had no carport assigned to it at the time of the initial conveyance of the unit, the consolidating master deed does not serve as a basis for plaintiffs' claim of title to the carport at issue.

The above being true, plaintiffs' claim against Ramblewood is without merit. Plaintiffs' sole claim on appeal as to Ramblewood is that it acted contrary to the consolidating master deed and plaintiffs' rights in the carport when it removed a sign bearing the number "48" from the carport shortly after plaintiffs purchased Unit 48 and disallowed plaintiffs' use of the carport.

We first note that a party responding to a motion for summary disposition under MCR 2.116(C)(10) has the burden of showing that a genuine issue of disputed fact exists and producing admissible evidence to establish those disputed facts. *Meagher v Wayne State Univ,* 222 Mich App 700, 719; 565 NW2d 401 (1997). Conjectures, speculations, conclusions, mere allegations or denials, and inadmissible hearsay are not sufficient to create a question of fact for the jury. *LaMothe v Auto Club Ins Ass'n,* 214 Mich App 577, 586; 543 NW2d 42 (1995); *Cloverleaf Car Co v Phillips Petroleum Co,* 213 Mich App 186, 192-193; 540 NW2d 297 (1995). While plaintiffs claim that a sign bearing the number "48" was on the carport until shortly after they moved in, plaintiffs have submitted no photographs, affidavits, or other documentary evidence to support this claim. As plaintiffs presented a mere assertion of fact in response to Ramblewood's motion for summary disposition (and to this Court) the trial court appropriately granted Ramblewood's motion for summary disposition. More significantly, if, in fact, Ramblewood did remove the sign and preclude plaintiffs from using the carport, because, as indicated above, plaintiffs had and have no ownership interest in the carport, Ramblewood did not act contrary to the consolidating master deed or plaintiffs' rights in doing so.

Plaintiffs also claim on appeal that if ownership of the carport was not conveyed to them, then the Trust, by referencing the consolidating master deed in the warranty deed, made a misstatement as to the title of the carport. According to plaintiffs, this misstatement amounts to a breach of the warranty of title. We disagree.

Again, the consolidating master deed states that the carport belongs to the Unit to which it was assigned at the time of the initial conveyance of the Unit. When Unit 48 was initially conveyed, it had no carport assigned to it, and the face of the warranty deed initially conveying Unit 48 contains a provision stating as much. No misstatement can be found in the warranty deed simply through a reference to the consolidating master deed, as the consolidating master deed does not purport to grant title of the carport to plaintiffs (or Unit 48).

In addition, there is no assertion that the Trust affirmatively stated that the carport was being transferred to plaintiffs as part of the sale of Unit 48. And, there can be no actionable misrepresentation when a plaintiff has available the means of discovering the truth and is not precluded from employing them. See, e.g., *Webb v Malmquist,* 195 Mich App 470, 474; 491 NW2d 851 (1992). In this matter, the listing form for the sale of the condominium shows that Unit 48 has a garage, but "carport" is not circled as being included in the sale. More importantly, as previously indicated, the warranty deed initially conveying Unit 48 to Ms. Brainin specifically states on the face of the deed that there is no carport assigned with the unit. This deed, and the amendment and reassignment of the carport, were recorded as required. A recorded instrument serves as notice to all persons and all subsequent owners or encumbrances take subject to the perfected liens, rights or interests. *Piech v Beaty,* 298 Mich 535, 538; 299 NW 705 (1941). As plaintiffs had available to them the means for ascertaining the ownership of the carport and the ownership was reflected in recorded instruments, constructive knowledge of the carport's ownership can be imputed to plaintiffs.

Plaintiffs finally argue that no applicable policy exclusion relieves Transnation from its obligation to insure against the losses and damages suffered by plaintiffs when their exclusive right to the carport is being challenged/ignored. We disagree.

When we review an insurance policy, we must examine the language of the policy and interpret the policy terms in accordance with established principles of contract construction. *Allstate Ins Co v McCarn,* 466 Mich 277, 280; 645 NW2d 20 (2002). The interpretation of a contract is a question of law reviewed de novo on appeal. *Archambo v Lawyers Title Insurance Corp,* 466 Mich 402, 408; 646 NW2d 170 (2002). Further, whether contract language is ambiguous, and requires resolution by the trier of fact is also a question of law reviewed de novo on appeal. *Klapp v United Ins Group Agency, Inc,* 468 Mich 459, 463; 663 NW2d 447 (2003).

The main goal of interpreting a contract is to honor the intent of the parties. *Mahnick v Bell Co*, 256 Mich App 154, 159-160; 662 NW2d 830 (2003). An insurance policy must be enforced according to its terms. *Nabozny v Burkhardt,* 461 Mich 471, 476 n. 8; 606 NW2d 639 (2000). When the language of the policy is clear and unambiguous, its construction presents a question of law for the trial court. *Michigan Nat'l Bank v Laskowski,* 228 Mich App 710, 714; 580 NW2d 8 (1998).

The title insurance policy issued to plaintiffs by Transnation regarding Unit 48 states, at Schedule B, that the policy "does not insure against loss or damage and the Company will not pay costs, attorneys' fees or expenses which arise by reason of":

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> 6. Rights of co-owners of RAMBLEWOOD MANOR HOMES in common elements as set forth in Master Deed. . .as amended. . . and all terms and conditions, regulations, restrictions, easements and other matters set forth in the above described Master Deed and statutes.
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> 7. Covenants, conditions, restrictions, easements, and right-of-ways, if any affecting the common elements.

This matter arose out of plaintiffs' (as co-owners) claim of ownership of a common element contrary to any other co-owner's right to that same common element. As the policy at issue specifically states that it will not insure against loss or damage arising by reason of a co-owner's rights in common elements, Transnation owes no coverage to plaintiffs on their complaint.[2]

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[2] Because plaintiffs did not properly raise or brief the "negligent search" issue on appeal, we need not address it. See, *Derderian v Genesys Health Care Systems,* 263 Mich App 364, 381; 689 NW2d 145 (2004)(Where an appellant fails to dispute or address the basis of the trial court's ruling, this Court need not grant the relief sought) and, *Yee v Shiawassee Co Bd of Comm'rs,* 251 Mich App 379, 406; 651 NW2d 756 (2002)(The failure to properly address the merits of an assertion of error constitutes abandonment of the issue).

Affirmed.

/s/ Deborah A. Servitto
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly