

STATE OF MICHIGAN
COURT OF APPEALS

TONJA METZ GILES and NELLIE SHAW,

Plaintiffs-Appellants,

v

ANTONIO A. JOQUICO, CARMELITA
M. JOQUICO and LAURETA M. SANTOMIN,

Defendants/Cross-Defendants,¹

and

ALONZO MARABLE,

Defendant/Cross-Plaintiff-Appellee,

and

DESIREE MARABLE and ROSA M. WILLIAMS,

Defendants-Appellees.²

Before: Jansen, P.J., and Collins and Cooper, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting summary disposition in favor of defendants Alonzo Marable, Desiree Marable, and Rosa Williams. We affirm.

Defendants Antonio Joquico, Carmelita Joquico, and Laureta Santomin owned a commercial building located in Detroit. Prior to the alleged transaction, plaintiff Giles had been

¹ On May 27, 1999, Antonio A. Joquico, Carmelita M. Joquico, and Laureta Santomin were dismissed from the case through a consent judgment.

² First National Acceptance Company did not file an answer to plaintiffs' complaint and plaintiffs did not move for default judgment against it. This party is not participating in this appeal.

a tenant in a portion of this property operating a balloon shop therein. In January 1997, plaintiff Giles expressed interest in buying the property and wrote a check to defendant Joquico for \$7,500.³ Plaintiff Giles gave defendant Joquico \$3,200 in cash towards the purchase. Defendant Joquico told plaintiff Giles that he would get the paperwork together and mentioned sending money to National Acceptance Corporation to "change the names over." Defendant Joquico testified that he agreed to hold the property for plaintiff Giles for a short period of time. After January 1997, defendant Joquico allowed plaintiff Giles to find tenants and rent out two of the apartments in the building. Plaintiff had not possessed these apartments prior to the alleged agreement. Defendant Joquico knew that plaintiff Giles received rent payments from these tenants.

In July 1997, defendant Joquico informed defendant Alonzo Marable that the alleged deal to buy the building fell apart because the buyer failed to pay the asking price. Defendant Marable then asked defendant Joquico if the property was still on the market and if he would give defendant Marable time to raise the money to acquire the building. Defendant Joquico testified: "I told Mr. Marable I got a cash deposit on the building, but I didn't tell who it was, and I kept on saying, and whoever, whoever comes up with the money buys the building." Defendant Marable knew that plaintiff Giles occupied a commercial area of the property.

On September 4, 1997, plaintiff Giles filed a claim of interest at the Wayne County Register of Deeds. Plaintiff Giles stated that an executory contract for the sale of the land was entered into on January 11, 1997, between plaintiff Giles and defendants Joquico and Santomin. The following day, closing documents were signed by defendant Marable and defendants Joquico and Santomin. Defendants Joquico and Santomin also signed a warranty deed conveying the property to defendant Marable. On December 12, 1997, defendant Marable quit claimed his interest to defendants Desiree Marable and Rosa Williams.

Plaintiffs filed a complaint against defendants Joquico and Santomin and defendants Marable and Rosa Williams. Plaintiffs alleged contractual interference against defendants Marable and Williams and brought an action for quiet title. Plaintiffs further claimed that a constructive trust should be established in plaintiffs' favor.

On May 27, 1999, plaintiffs entered into a consent judgment wherein plaintiffs released their claims against defendants Joquico and Santomin in exchange for \$12,000. Plaintiffs then filed a motion for summary disposition requesting that the trial court find that defendant Marable was not a bona fide purchaser. The trial court denied plaintiffs' motion for summary disposition and entered summary disposition in favor of defendants based on MCR 2.116(C)(10) and MCR 2.116(D)(2).

³ The check contained a notation that \$800 was for past due rent and that the remainder was a deposit on the purchase of the building.

I. Specific Performance of Contract

Plaintiffs first argue that they had a valid, enforceable agreement for the sale of the property at 11018, 11020 and 11022 Whittier in Detroit with defendants Joquico and Santomin. Plaintiffs insist that this agreement can be enforced against defendants Marable and Williams because they are subsequent purchasers of the property who had knowledge of the sellers' prior contractual obligations. We disagree.

This Court reviews a trial court's decision regarding a motion for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). In reviewing a motion under MCR 2.116(C)(10), the court considers the affidavits, pleadings, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion. Summary disposition may be granted if the affidavits and other documentary evidence show that there is no genuine issue with respect to any material fact and the moving party is entitled to judgment as a matter of law. *Smith, supra* at 454-455. "Summary disposition is properly granted to the opposing party if it appears to the court that that party, rather than the moving party, is entitled to judgment." MCR 2.116(D)(2); *Sharper Image Corp v Department of Treasury*, 216 Mich App 698, 701; 550 NW2d 596 (1996).

In order to quiet title, the plaintiffs have the burden of proof and must make out a prima facie case of title. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet County Road Comm'n*, 236 Mich App 546, 550; 600 NW2d 698 (1999). Thereafter, the defendants have the burden of proving superior right of title in themselves. *Id.* In this case, the trial court disposed of plaintiffs' claims stating: "You cannot sue him, this defendant, to quiet title when you don't have title." This conclusion ignores the fact that more than one person can have an interest in property and that the interest may take on different forms; i.e., legal title or equitable title. *Id.* at 550; *In re Forfeiture of \$53.00*, 178 Mich App 480, 493; 444 NW2d 182 (1989). In an executory contract, legal title remains in the seller until the buyer performs all the obligations of the contract while equitable title passes to the buyer upon proper execution of the contract. *Zurcher v Herveat*, 238 Mich App 267, 291; 605 NW2d 329 (1999). Therefore, if plaintiffs and defendants Joquico and Santomin created an enforceable contract, then at the time defendants Joquico and Santomin conveyed the property to defendants Marable and Williams, plaintiffs held equitable title.

Additionally, the court's reliance on the settlement agreement for \$12,000 between defendants Joquico and Santomin, as evidence that plaintiffs did not have title, was error. Such a determination improperly gave collateral estoppel effect to the consent judgment between plaintiffs and defendants Joquico and Santomin.

Collateral estoppel "precludes relitigation of an issue in a subsequent, different cause of action between the same parties or their privies when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding." *Ditmore v Michalik*, 244 Mich App 569, 577; 625 NW2d 462 (2001). A consent judgment is generally not entitled to collateral estoppel effect and does not preclude relitigation, in

connection with a different claim or cause of action, of the same issues involved in the action that originally terminated in the consent judgment. *Smit v State Farm Mutual Auto Ins Co*, 207 Mich App 674, 682; 525 NW2d 528 (1994), citing *Van Pembrook v Zero Mfg Co*, 146 Mich App 87, 102-103; 380 NW2d 60 (1985). The reason for this is that a consent judgment, which reflects primarily the agreement of the parties, does not represent an adjudication of the issues. *Van Pembrook*, *supra* at 103. Thus, the determination of whether plaintiffs had title and can maintain an action to quiet title against defendants Marable and Williams is not determined by the consent judgment, but rather by whether plaintiffs and defendants Joquico and Santomin created an enforceable agreement.

After a careful review of the record, we find that plaintiffs and defendants Joquico and Santomin failed to create an enforceable contract. In a contract for the sale of land, the purchase price is an essential term. *Zurcher*, *supra* at 282. “A valid contract requires mutual assent on all essential terms. Mere discussions and negotiation cannot substitute for the formal requirements of a contract.” *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997) (citation omitted). Moreover, an expression of intention does not create a binding contract. *Kamalnath v Mercy Memorial Hospital Corp*, 194 Mich App 543, 549; 487 NW2d 499 (1992). Plaintiffs bear the burden of proving the existence of the contract. *Id.* Indeed, there can be no presumption in favor of the execution of a contract, regardless of the equities in a case, because the trial court is unauthorized to make a contract for the parties when none exists. *Id.*, quoting *Hammel v Foor*, 359 Mich 392, 400; 102 NW2d 196 (1960).

Although plaintiffs alleged in their complaint and assert on appeal that the agreed purchase price was \$48,000, there is no evidence in the lower court record, either written or parol, to support this assertion. The existence of a disputed fact must be established by admissible evidence, a mere promise to offer factual support at trial is insufficient. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817. Absent mutual assent as to the purchase price, reasonable minds could not find that an enforceable contract existed. The trial court properly granted summary disposition to defendants because plaintiffs cannot maintain an action to quiet title against defendants Marable and Williams when plaintiffs failed to establish an enforceable contract with defendants Joquico and Santomin. We will not disturb a trial court’s conclusion if it reached the right result for the wrong reason. *Wayne Co v William G & Virginia M Britton Trust*, 211 Mich App 688, 692; 536 NW2d 598 (1995).

II. MCR 2.116(I)(2)

Plaintiffs also argue that the trial court erred in granting summary disposition to defendants Marable and Williams because defendants did not comply with the court rules. We disagree. This Court reviews questions of law de novo. *Burba v Burba*, 461 Mich 637, 647; 610 NW2d 873 (2000).

MCR 2.116(G)(1)(a) provides: “[u]nless a different period is set by the court, (i) a written motion under this rule with supporting brief and any affidavits must be filed and served at least 21 days before the time set for the hearing” However, MCR 2.116(G)(1) did not require that plaintiffs be given twenty-one days’ notice before the trial court could grant summary

disposition to defendants pursuant to MCR 2.116(I)(2), as defendants were not the moving party. Rather, MCR 2.116(I)(2) permits a court to render judgment in favor of the opposing party if it appears to the court “that the opposing party, rather than the moving party, is entitled to judgment as a matter of law.” *Washburn v Michailoff*, 240 Mich App 669, 672; 613 NW2d 405 (2000). Because MCR 2.116(I)(2) permits the trial court to grant summary disposition to a party opposing a motion for summary disposition, the trial court did not err in granting summary disposition to defendants Marable and Williams.

III. Bona Fide Purchaser

Plaintiffs finally argue that the trial court improperly denied their motion for summary disposition because defendants Marable and Williams were clearly not bona fide purchasers. We disagree.⁴

The trial court properly denied plaintiffs' motion for summary disposition because reasonable minds could not differ as to whether plaintiffs and defendants Joquico and Santomin created an enforceable contract. “A good-faith purchaser is one who purchases without notice of a defect in the vendor's title.” *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992). Whereas a person with notice of a possible defect in a vendor's title, who fails to further inquire into the possible rights of third parties, is not a good-faith purchaser and is chargeable with notice of what such inquiries and the exercise of ordinary caution would have disclosed. *Royce v Duthler*, 209 Mich App 682; 531 NW2d 817 (1995).

MCL 565.29 specifically provides that real estate conveyances not properly recorded are “void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded.” The term “conveyance” is construed to:

embrace every instrument in writing, by which any estate or interest in real estate is created, aliened, mortgaged or assigned; or by which the title to any real estate may be affected in law or equity, except wills, leases for a term not exceeding 3 years, and executory contracts for the sale or purchase of lands. [MCL 565.35.]

The claim of interest and defendant Joquico's statement to defendant Marable about the "deal" with plaintiffs constituted notice of a possible defect in defendant Joquico's title. However, as discussed above, there was never a valid contract between plaintiffs and defendants Joquico and Santomin. Thus, there was not a prior conveyance that would preclude defendants Marable and

⁴ The standard of review for summary disposition is discussed in the first issue.

Williams from being bona fide purchasers pursuant to MCL 565.29. Therefore, the trial court did not err in denying plaintiffs' motion for summary disposition.

Affirmed.

/s/ Kathleen Jansen
/s/ Jeffrey G. Collins
/s/ Jessica R. Cooper