

STATE OF MICHIGAN
COURT OF APPEALS

H. JOSEPH JOACHIM III and CINDY LOU
JOACHIM,

UNPUBLISHED
June 22, 2004

Plaintiffs/Counterdefendants-
Appellees,

v

LSM FAMILY TRUST, KFP TRUST, and KURT
PARSCH,

No. 245586
Sanilac Circuit Court
LC No. 01-027719-CH

Defendants/Counterplaintiffs-
Appellants.

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

PER CURIAM.

Defendants appeal as of right the trial court's judgment, following a bench trial, awarding plaintiffs \$15,082.62 in damages, plus taxable costs and interest, and dismissing defendants' counterclaims. Because the trial court did not err in treating the three defendants as a single entity and because the judgment has been satisfied, we conclude that defendants have waived their right to appeal the judgment for error.

I. Facts

Plaintiffs owned a parcel of property in Lexington, Michigan, which was subject to a mortgage held by Sterling Bank and Trust. In January 1999, plaintiffs executed a land contract for the property with Kurt Parsch, as trustee for defendant LSM Family Trust. In December 1999, Parsch, as trustee for KFP Trust, purchased that mortgage, which Sterling then assigned to LSM. LSM formally assigned the mortgage to KFP over a year later. In July 2000, before the assignment occurred, Parsch, as trustee for KFP, sent plaintiff¹ a letter advising him that KFP now held the mortgage, that plaintiff was in default of the mortgage, and that KFP was calling in the mortgage note.

¹ Because Cindy Lou Joachim's claim is derivative of her husband's, we use the singular term "plaintiff" in this opinion.

In March 2001, plaintiff filed a complaint to foreclose the land contract, and for an accounting. Defendants counterclaimed for foreclosure of the mortgage, and also alleged breach of contract, breach of fiduciary duty, and fraudulent, innocent, and silent misrepresentation. On motions for summary disposition, the trial court reduced defendants' contract counterclaim to the issue of plaintiff's fulfillment of his obligations pursuant to the underlying mortgage, as detailed in the land contract, and reduced defendants' misrepresentation counterclaims to issues arising from monthly escrow requirements on the mortgage. The court also dismissed defendants' breach of fiduciary duty counterclaim, along with defendants' request for exemplary damages. The trial court's summary disposition rulings are not at issue on appeal.

After the one-day bench trial, the court dismissed defendants' misrepresentation counterclaims, issued findings concerning how to credit certain payments on the land contract or mortgage, and denied motions for attorney fees. When the orders were finally settled, the trial court awarded plaintiffs \$15,082.62 in damages, plus costs and interest. As defendants note in their brief on appeal, this amount was paid in full.²

II. Trusts

Defendants argue that the trial court erred in treating them as a single entity. We disagree. "When reviewing equitable actions, this Court employs review de novo of the decision and review for clear error of the findings of fact in support of the equitable decision rendered." *LaFond v Rumler*, 226 Mich App 447, 450; 574 NW2d 40 (1997).

Defendants cite no clear rule of law preventing a trial court from treating as a single entity parties situated as the three defendants in this case (a trustee and beneficiary and two trusts over which the trustee/beneficiary has close control). Although the law respects that a corporation and its owners are separate entities, with certain exceptions, see *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 457; 559 NW2d 379 (1996), the law does not require that a trust be recognized as a separate entity where there is minimal distinction between the settlor, trustee, and beneficiary, see *In re Johannes Trust*, 191 Mich App 514, 518; 479 NW2d 25 (1991), citing 1 Restatement Trusts, 2d, § 156.³

² After the judgment was entered, the trial court also ordered defendants to pay plaintiff case evaluation sanctions, which defendants likewise paid in full.

³ The trial exhibits include no trust documents indicating the original purposes of the trusts. But two affidavits appear with KFP's July 11, 2001, motion for summary disposition, both sworn by Parsch, one on behalf of each of the defendant trusts. According to those affidavits, KFP was created by Parsch, and LSM was created by Parsch's wife, this indicating a substantial identity of settlors. That the two have separate tax identification numbers is of little consequence. The greatest difference, taking the affidavits at face value, is that KFP is revocable, and LSM is irrevocable. Although the two ostensibly have separate assets, there is no detailing of the kind and extent of assets. Similarly, despite the assertion that the two trusts exist for separate purposes, there is no description of the specific purpose of either. In trial testimony, Parsch added that both he and his wife are trustees of LSM, and that the beneficiaries are LSM and two other trusts. Parsch described KFP as a trust that he had established to hold his assets before he

(continued...)

Moreover, defendants cite no evidence contradicting the trial court's conclusion that Parsch used his trusts as "legal contrivances," in that "[w]hatever is convenient for Mr. Parsch and KFP and LSM, that's where it passes to back and forth from one thing to the other." To the contrary, the evidence produced at trial supports the trial court's conclusion. For example, although KFP ostensibly purchased plaintiff's mortgage from Sterling, the latter assigned that interest to LSM. Sterling's acceptance of payment from KFP while assigning the mortgage to LSM indicates an understanding on its part that those two trusts were, at least for that purpose, essentially one and the same. Parsch acquiescence in this is also significant. One would expect a trustee of two truly distinct trusts to protest loudly if what one trust purchased was then tendered to the other. Or, to put it another way, it would be an egregious breach of fiduciary duties for a trustee of two different trusts to have one trust pay for another's major asset, absent carefully executed formalities indicating the creation of a third-party beneficiary situation or a lender-borrower relationship between the trusts.⁴ Finally, we note that LSM waited for over a year before it formally assigned the mortgage to KFP, the ostensible purchaser.

Under these circumstances, the trial court did not clearly err in its decision to treat Parsch and his trusts as a single entity.

III. The Judgment Was Satisfied

Before the trial court entered the final judgment, defendants paid the amount the trial court found plaintiffs were owed. In exchange, plaintiffs gave defendants a warranty deed for the property in question and the property was sold to an unrelated third party. The payment and exchange of the deed was specifically acknowledged in the final judgment.

"The general rule states that a satisfaction of judgment is the end of proceedings and bars any further effort to alter or amend the final judgment." *Becker v Halliday*, 218 Mich App 576, 578; 554 NW2d 67 (1996).

As noted in *Becker* . . . "a party who accepts satisfaction in whole or in part waives the right to maintain an appeal or seek review of the judgment for error, as long as the appeal or review might result in putting at issue the right to the relief already received." This reasoning applies with equal force to defendants satisfying a judgment as it does to plaintiffs accepting the satisfaction of a judgment. See *Horowitz v Rott*, 235 Mich 369, 372; 209 NW 131 (1926) (satisfaction of a judgment bars appeal). [*Grand Valley Health Center v Amerisure* ___ Mich App ___; ___ NW2d ___ (Docket No. 244777, issued March 4, 2004) slip op, p 26.]

(...continued)

was married, and added that he was its trustee, and that its beneficiaries were his two children. This evidence reveals only minimally separate identities for the two trusts -- identities which could well be conflated by their interactions in a real estate deal.

⁴ Although defendants do not mention it with regard to this issue, Parsch testified that underlying the transaction was a lender-borrower relationship between the two trusts. But defendants apparently produced no documentation of this. And the trial court was, of course, free to doubt this aspect of Parsch's testimony.

Here, defendants completely satisfied the judgment entered in plaintiffs' favor. When the judgment was entered, "two courses were open to defendant. He could satisfy the judgment or review it in this court. He could not do both. He chose by his voluntary act to satisfy it. When the judgment was satisfied the case was at an end." *Horowitz*, supra at 372. Accordingly, defendants have waived their right to appeal the judgment for error.

/s/ Michael R. Smolenski

/s/ Helene N. White

/s/ Kirsten Frank Kelly