

STATE OF MICHIGAN
COURT OF APPEALS

GIULIO G. BALDRIGHI, Trustee of the GIULIO
BALDRIGHI LIVING TRUST,

UNPUBLISHED
December 14, 2004

Plaintiff/Counterdefendant-
Appellant,

v

LEO R. BERGERON and DOROTHY M.
BERGERON,

No. 249656
Ogemaw Circuit Court
LC No. 02-654108-CH

Defendants/Counterplaintiffs-
Appellees.

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendants under MCR 2.116(C)(8) and (10), and denying plaintiff's cross-motion for summary disposition. We affirm. This case is being decided without oral argument under MCR 7.214(E)

Plaintiff brought this action to terminate defendants' life estate in real property in Ogemaw County that defendants lease to others for hunting and farming. Plaintiff argues that the trial court erred in finding that he did not have the right to terminate defendants' life estate due to their failure to pay property taxes and insurance. We disagree.

An action to determine an interest in land is "equitable in nature." MCL 600.2932(5). Equitable issues are reviewed de novo, although a court's findings of fact supporting its decision are reviewed for clear error. *Webb v Smith (After Remand)*, 204 Mich App 564, 568; 516 NW2d 124 (1994).

"A life tenant's principal privilege is that of making a beneficial use of the land or receiving [all] the rents and profits arising from such use."¹ *Cunningham, Stoebeck & Whitman*,

¹ On appeal, plaintiff has abandoned any claim that it is entitled to terminate defendants' life estate because defendants leased the property for farming and hunting.

The Law of Property (2d ed), pp 64, 128. As a general rule, a life tenant has a duty to pay property taxes, absent an agreement otherwise. *Id.* at 64-65, 166; see also *In re Ringle's Estate*, 259 Mich 262, 265; 242 NW 908 (1932); *Pike v Gilbert*, 227 Mich 515, 518; 198 NW 923 (1924); *Stroh v O'Hearn*, 176 Mich 164, 179; 142 NW 865 (1913). But where a remainderman has paid taxes on behalf of the life tenant, the remedy is an action for reimbursement in the form of money damages. Cunningham, Stoebuck & Whitman, *supra* at 175-176. Here, the trial court properly limited plaintiff's remedy to reimbursement of the amounts due for the 2001 and 2002 property taxes.

In addition to an action for money damages, forfeiture of a life estate may be available as a remedy for "voluntary waste," which is an affirmative or deliberate act by the life tenant that injures the value of the remainderman's interest in the land. *Id.* at 158-165, 170-173, 178. But the failure to pay "carrying charges," such as property taxes, is at best "permissive waste," which is damage to the remainderman's interest resulting from the life tenant's "failure . . . to perform an affirmative duty imposed upon him for the benefit of the owners of future interests in the land." *Id.* at 158, 165. Thus, the trial court correctly held that plaintiff was not entitled to seek forfeiture of defendants' life estate for their alleged failure to pay taxes and insurance on the property. Plaintiff has not cited any contrary authority.²

The trial court also found that the clean hands doctrine applies in equitable actions. See *Rose v National Auction Group*, 466 Mich 453, 462; 646 NW2d 455 (2002). "[I]f there are any indications of overreaching or unfairness on [an equity plaintiff's] part, the court will refuse to entertain the case and turn him over to the usual remedies" available at law. *Id.*, quoting *Rust v Conrad*, 47 Mich 449, 454; 11 NW 265 (1882). Here, the trial court found that plaintiff's conduct in contacting defendants' tenants and the United States Department of Agriculture interfered with defendants' right to the beneficial use of the property and, therefore, plaintiff had unclean hands. Plaintiff does not challenge this determination on appeal.

For these reasons, the trial court did not err in dismissing plaintiff's request for forfeiture of defendants' life estate.

Affirmed.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens

² Neither *Ringle* nor *Pike*, *supra*, involved the forfeiture of a life estate. In *Stroh*, *supra* at 182, the interests of the life tenant and the remaindermen were terminated *at their unanimous request* because the debts upon the land had become unbearable and threatened to consume the entire estate.