STATE OF MICHIGAN

COURT OF APPEALS

AARON FLOURNOY, Plaintiff-Appellee,	UNPUBLISHED June 21, 2005
v VIOLA SEARS, Defendant-Appellant.	No. 260858 Wayne Circuit Court LC No. 04-410253-CH

Before: O'Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right a grant of summary disposition in favor of plaintiff in this quiet title action involving real property located in Hamtramck, Michigan. The trial court ordered defendant's interest in the property extinguished and granted possession to plaintiff. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1985, the subject property was conveyed to William and Sandra Milhouse (a.k.a. Sandra Moore) by Susie Smith, both as herself and as a survivor of her mother, Dicey Flournoy. Sandra Milhouse is plaintiff's sister. On January 23, 1993, the Milhouses quitclaimed the property to plaintiff, Sandra Milhouse, and Sharon Flournoy, ostensibly because plaintiff helped Ms. Moore extricate herself from property tax troubles. On November 13, 1994, plaintiff and Sharon Flournoy each quitclaimed their interest in the property back to Sandra Milhouse in separate deeds.

On May 7, 2003, Sandra Milhouse again quitclaimed the property to plaintiff. Plaintiff maintains that this transfer occurred when he was living in California and after he learned that Milhouse was no longer living on the property. Plaintiff came for a visit and drove by the property, and noticed that it was boarded up. He went to the city offices and inquired about the status of the property, and was told that the City of Detroit had taken a portion thereof for failure to pay property taxes, and that Milhouse still owned the other lot. Plaintiff was told that he could redeem or purchase the property for $300, and that he would have to purchase the remaining lot from Milhouse. Plaintiff contacted Milhouse, who executed the quitclaim deed. The deed was recorded on May 7, 2003. Plaintiff returned to California.

Plaintiff subsequently returned to Michigan in August of 2003, and noticed that defendant was present in the house. Defendant and her son, Russell Sears (Sears), were plaintiff's neighbors at one time. Upon further inquiry, plaintiff learned that defendant claimed

Milhouse had apparently transferred the property to Sears in 1995. According to defendant, Milhouse executed a "replacement deed" on May 31, 2002, although the notary signature states that the deed was actually signed by Milhouse on June 18, 2002. This deed was recorded on September 18, 2003. In this deed, Milhouse quitclaimed her interest in the property to defendant, not to Sears. Despite this fact, defendant asserted that the deed was given to her to replace the earlier one to her son that had been lost. Defendant knew her son had purchased the property, but he asked her to look out for his interests when he moved to Virginia in 1999 or 2000. Defendant claimed that she needed the replacement deed issued to her because she learned that people were squatting on the property, and she wanted the authority to protect the property for her son's benefit. Despite her claim that the original deed was lost, defendant presented a copy of the signed deed to Sears during her deposition. The deed, which is dated May 16, 1995 and which was never recorded, appears to have been signed by Sandra Milhouse. Defendant is not challenging the validity of the 1995 deed to Sears and, in fact, continues to base her own claim on it.

Plaintiff filed suit against defendant seeking to evict her and to quiet title in the property. The trial court granted summary disposition to plaintiff, extinguished defendant's interest in the property, and granted writ of possession to plaintiff.

Defendant now argues that the trial court erred by granting summary disposition to plaintiff. She maintains that she presented genuine issues of material fact as to whether plaintiff was a good faith purchaser for value, and asserts that if he was not, he is not entitled to the protection of MCL 565.29. That statute provides:

> Every conveyance of real estate within the state hereafter made, which shall not be recorded as provided in this chapter, shall be 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 fact that such first recorded conveyance is in the form or contains the terms of a deed of quitclaim and release shall not affect the question of good faith of such subsequent purchaser, or be of itself notice to him of any unrecorded conveyance of the same real estate or any part thereof.

Under the language of the statute, Michigan is a "race-notice" state. Recorded liens, rights, and interests in property take priority over subsequent owners and encumbrances. MCL 565.25. Where an individual fails to record an interest, that interest is void against any subsequent holder who purchased the interest in good faith for valuable consideration and who records first. MCL 565.29. A person who has notice of a possible defect in a vendor's title and fails to make further inquiry into the possible rights of a third party is not a good-faith purchaser, and is chargeable with notice of what an inquiry would have disclosed. *Kastle v Clemons*, 330 Mich 28, 31; 46 NW2d 450 (1951); *Royce v Duthler*, 209 Mich App 682, 690; 531 NW2d 817 (1995). Notice need be only of the possibility of the rights of another, not positive knowledge of those rights. *Id*. Notice must be of such facts that would lead any honest person, using ordinary caution, to make further inquiries into the possible rights of another in the property. *Id*.

The trial court's rationale for finding in plaintiff's favor is not discussed in detail. However, we conclude that the trial court did not err by granting summary disposition to plaintiff and in granting a writ of possession in plaintiff's favor as against defendant. Defendant has

consistently maintained that the deed to Sears was validly executed in 1995, and that the later deed to her was executed as a "replacement" for this earlier conveyance. Defendant is bound by this admission. See *Barlow v Crane-Houdaille, Inc*, 191 Mich App 244, 250-251; 477 NW2d 133 (1991); *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001). Therefore, defendant cannot now prevail. Milhouse could not transfer interest in the property to defendant when she had already disposed of her entire interest in the property to Sears. Defendant is not claiming the protection of MCL 565.29 for herself. In any event, defendant admitted during her deposition that she paid no consideration for the transfer from Milhouse and knew of the earlier conveyance. This fact precludes her from acquiring protection as a good faith purchaser under the statute. Furthermore, defendant has not presented any written evidence to show that Sears transferred an interest in the property to her. See MCL 566.106. Thus, for purposes of this action, it is irrelevant whether or not plaintiff had notice of Milhouse' 2002 transfer to defendant or of the 1995 transfer to Sears. Defendant has no interest in the property. The trial court did not err in granting plaintiff's motion for summary disposition and issuing a writ of possession in favor of plaintiff against defendant.[1]

Affirmed.

/s/ Peter D. O'Connell
/s/ Bill Schuette
/s/ Stephen L. Borrello

[1] We do not decide the validity of other possible outstanding claims for ownership of the subject property.